DEADLINE 8 SUBMISSION
STONE HILL PARK LTD'S COMMENTS ON THE APPLICANT'S RESPONSE TO EXA'S THIRD WRITTEN QUESTIONS
PINS APPLICATION REFERENCE: TR020002

Please find below SHP's comments on the Applicant's Answers to Third Written Questions [REP7a-002].

In view of both (i) the degree to which comments are necessary as a consequence of the Applicant's approach to responding the written questions; and (ii) the very short time available in the examination timetable to provide comments, SHP has necessarily concentrated its comments on certain key areas of Compulsory Acquisition, Funding and Need. This is without prejudice to its case that other aspects of the application proposals remain fundamentally flawed.

SHP's comments have been prepared with assistance of its advisory team, however we would note that comments prepared by York Aviation have been extracted from a standalone note that is attached as Appendix 1. York Aviation has principally commented on points of relevance to the need case and the forecasts of usage for the development that underpin the entire NSIP Justification, including the assessment of socio-economic impacts.

Written Question CA.3.6 **Crown Land: High Resolution Direction Finder** Given your response to question CA.2.4, that no alternative site for the High Resolution Direction Finder (HRDF) has been agreed with the Ministry of Defence (HRDF), **show why the ExA's should not consider that this position should be classified as being a potential risk or impediments to implementation of the scheme that has not been properly managed.**
The Applicant's Response The Applicant considers that although this is a potential impediment to the scheme it has been properly managed (the fact that it has not been fully resolved does not mean that it has not been properly managed). The Applicant first contacted the Ministry of Defence in January 2017 about this issue and has continually pressed for progress since then. It took a very long time for the MoD to engage, and subsequently engage its contractor Aquila to assess the position. If agreement on moving the HRDF is not possible during the examination then the Applicant will continue to seek it and will update the Secretary of State during the decision period. The Applicant is confident that the site it has identified is suitable to house the HRDF. As outlined in our response to CA.3.5, the Applicant has been engaged with DIO since January 2017. The Applicant consulted Air Command High Wycombe in September 2017, who referred to DIO for resolution. The Applicant engaged Aquila, the MOD's Engineering Authority in October 2018 and, after being

referred to the Defence Equipment and Support organisation at Abbey Wood to gain its approval, have now agreed terms and conditions for Aquila to undertake the necessary technical assessment.

During this period, we have conducted safeguarding assessments of 7 alternative sites, identifying the preferred site which has allowed discussions with the relevant landowner to be conducted. We have twice conducted face to face meetings with DIO on this specific issue and twice submitted a SoCG for their consideration.

The issue has been specifically raised by Sir Roger Gale, the local MP, with Secretary of State for Defence.

Therefore, whilst the Applicant accepts that this issue is not in the position that either we or the ExA would have wished at this stage of the submission, this is not due to it not being properly managed by the Applicant. Nevertheless, this issue does now represent a risk to implementation of the scheme but not a risk that cannot be managed. The Applicant remains hopeful that, by 9 Jul 19, the Aquila assessment will confirm the suitability of the proposed alternative location, or at least will be in a position to provide a letter of no impediment. The Applicant is ready to engage with both the Project MARSHALL Delivery Team and DIO to reach agreement before 9 Jul 19 if possible.

SHP Comments on the Applicant's Response

SHP would note the DIO's Deadline 7a submission [REP7a-026] provides clarification regarding how the proposed development would infringe on the safeguarded areas around the Beacon. It also referred to correspondence that has been provided to the Applicant's adviser and representations made to the Planning Inspectorate in September 2018.

SHP would note that the concerns and issues raised by the DIO are consistent with the response given by SHP to this question in its Deadline 7a submission [REP7a-044]. It is clear that this issue is a material risk and impediment to the implementation of the scheme.

SHP strongly dispute the Applicant's assertion that it has managed the issue properly.

As the evidence from the DIO demonstrates, the Applicant was fully aware that its proposed development infringes on the safeguarded area. As a consequence, the Applicant should not have submitted its application until it had greater certainty that this issue would not be an impediment to the implementation of its scheme.

Written Question CA.3.30

Acquiring by voluntary agreement: Stone Hill Park Limited

Provide evidence for the statement in the Applicant's response to CA.2.25 [REP6-index number to be allocated] that the Applicant is hopeful that these negotiations [between the Applicant and SHP] can be concluded satisfactorily shortly

The Applicant's Response

There has been telephone and email communication between the parties in the past few days.

SHP Comments on the Applicant's Response

SHP would refer the ExA to its response to written question CA.3.29 [REP7a-044]. This response was submitted on the afternoon of Wednesday 22 May 2019 and covered the period to 20 May 2019.

Firstly, SHP would note that it has always sought to provide fulsome, accurate and evidenced responses to the ExA, in contrast to the approach taken by the Applicant characterised by its response to this question.

In terms of the communication referred to by the Applicant, SHP would note the following;

As SHP had foreseen in its answer to question CA.3.29 [REP7a-044], the Applicant responded to SHP's email to the Applicant dated 20 May.

The Applicant contacted SHP on the evening of 22 May stating that it intended to submit a revised offer by Friday 24 May. At that time the Applicant advised that its offer may include a c.£1m - £1.5m reduction on the overall value of £20m that it had previously agreed to in its signed Heads of Terms on in December 2018 (but had not delivered on). On that call SHP cautioned that seeking such a reduction should be considered very carefully as it would be re-trading a previously agreed position.

Then, at 4.08pm on the afternoon of 24 May 2019, the Applicant submitted a revised offer where that value to SHP was £4.5 million less than it had previously agreed. The offer was also silent on the previously agreed restriction of residential use on the site. A copy of this email and the response from SHP are appended as Appendix CA.3.30. It is not considered a coincidence that this was also the deadline by which the Applicant was required to respond this written question.

SHP's previous submissions have explained in detail the Applicant's consistent lack of engagement and transparency with regard to the whole land acquisition process. A position that has been repeatedly revealed to the ExA though the examination process with regard to RSP's casual approach to engaging with other landowners and interested parties.

SHP's view remains that, ultimately the Applicant has not been serious in its intentions to acquire the land voluntarily and the repeated failure of the Applicant to honour its previous commitments is yet more evidence of this.

The email dated 24 May 2019 appears to be no more than attempt to distract the ExA from the Applicant's abject failure to comply with the DCLG Guidance related to procedures for the compulsory acquisition of land (2013).

The Applicant has had two clear opportunities to acquire the land through voluntary arrangement firstly through the lease proposals outlined by SHP and latterly the Heads of terms they signed up to in December 2018. They failed to do so each time.

It is SHP's firm view based on experience and evidence that the principals behind RSP have sought compulsory acquisition powers over its site as a priority, rather than as a last resort - having previously failed to secure them twice before.

Additionally, the Applicant's email to SHP contains a number of inaccurate and misleading statements, which are summarily addressed below;

- The explanation given for the Applicant's failure to engage over recent months fails to acknowledge that the Applicant had prior knowledge of the nature of the new agreement with the DfT and the beneficial provisions it contained.
- The Applicant's assertion that the land was last transacted at a price of £1.00 is wholly inaccurate. It is noted that a similar claim was made by Mr Smith of CBRE at the second CA Hearing on 4 June 2019, despite Mr Smith being provided with evidence (also included as part of Appendix CA.3.30) that SHP had acquired the land from its previous owner, Manston Skyport Ltd, for £7m in September 2014. This was a number of months after RiverOak Investment Corporation LLC (the predecessor of the Applicant) had made an offer of £7 million to the previous owner, as evidenced in SHP's comments on paragraph 2.9.20 of the Applicant's Comments on the Written Representations [REP5-028].
- As explained in Appendix 2 to SHP's Written Representations [REP3-025], Manston Skyport Ltd had previously acquired an airport operating company with material liabilities, which was also facing ongoing operational losses of £10,000 per day. It did not acquire the land for £1.
- It is also important to note that in addition to the acquisition costs of £7 million (plus costs, including SDLT of £280k) SHP has invested over £3.5 million to date in planning related costs in advancing its plans for a new residential led mixed use community on the site.

SHP Comments on the Applicant's Response to Written Question F.3.1

In order to address the Applicant's answer, SHP would refer to ExA to Appendix 1 of its Witten Summary of Oral Representations put at the 2nd CA Hearing [REP8-reference to be allocated].

Written Question F.3.2

Revised Funding Statement
The ExA notes the submission of a partly revised Funding Statement at DL6 on 3 May [REP6-index number to be allocated].
The ExA notes that one of the changes between this version and that submitted with the application documents [APP-013] is that the company structure has been amended to reflect that RiverOak Investments (UK) Ltd (RIU) is now the 90% owner of the Applicant rather than M.I.O. Investments Ltd.
The Revised Funding Statement [REP6-index number to be allocated] states at paragraph 12 that RIU has the same directors as M.I.O Investments Ltd, a Belize registered company, who are the funders of the project.
Information in the public domain held at Companies House shows that RIU has two Directors, Nicholas Rothwell and Rico Seitz.
i. Clarify whether M.I.O Investments Ltd or Nicholas Rothwell and Rico Seitz are the funders of the project.

The Structure Chart for M.I.0 Investments Ltd in Appendix F.2.4 in the Applicant's Appendices to Answers to Second Written Questions [REP6-index number to be allocated] shows Gerhard Huesler as holding a share in RIU.
ii. Is he a Director?
iii. Why is the Structure Chart for M.I.0 Investments Ltd in Appendix F.2.4 in the Applicant's Appendices to Answers to Second Written Questions [REP6-index number to be allocated] and not for RiverOak Investments (UK) Ltd?

The Applicant's Response

i. Mr Rothwell, who gave evidence at the March hearing on compulsory acquisition, and Mr Seitz are both significant funders of the Project. There are four additional funders, three of whom are referred to in correspondence from Helix Fiduciary AG appended at page 219 to the summary of the Applicant's case at the Compulsory Acquisition Hearing [REP5-011] . The fourth is Gerhard Huesler. M.I.O Investments Limited is a pass-through entity through which funds from those investors are invested into the Project.

ii. No, Gerhard Huesler is not a director of RIU.

iii. The heading of the structure chart at page 311 of the Appendices to Answers to Second Written Questions is incorrect and should refer to RiverOak Strategic Partners Limited rather than M.I.O. Investments. The content of the chart is correct.

SHP Comments on the Applicant's Response

i. What does "significant funders" mean? How much of the funding made to date has come from Mr Rothwell, Mr Seitz and Mr Huesler and how much from unknown investors.

ii. SHP would note that Mr Huesler is quoted as being a client relationship manager at Julius Baer bank on the RSP website.

iii. The structure chart shows M.I.O. Investments Ltd being a creditor of the Applicant.

However, this contradicts the position set out in the Applicant's filed accounts for the years ending 31 July 2017 and 31 July 2018, which show the Applicant only had creditors of £2. On basis the Applicant had investments totalling £2 in two subsidiary companies (RiverOak Operations Limited and RiverOak AL Limited) but no funding to pay up the capital, this £2 creditor position must relate to the unpaid capital in the subsidiary companies. M.I.O. Investments Ltd cannot therefore be a creditor.

The structure chart is also inconsistent with the statements made by the Applicant at the CA Hearing on 20 March 2019 that no funds had been invested in or loaned to RiverOak Strategic Partners Ltd.

Accordingly, the structure chart is clearly inaccurate and the question must be asked as to why the Applicant continues to provide contradictory information to this examination.

Written Question F.3.3

Revised Funding Statement

The Revised Funding Statement [REP6-index number to be allocated] states at paragraph 12 that RIU is managed and administered by Helix Fiduciary AG ("Helix"), a Swiss registered and regulated fiduciary company on behalf of the beneficial owners.

Information in the public domain held at Companies House shows that 60 per cent of the shares in RIU are held by HLX Nominees Ltd a company with an address in the Virgin Islands.

i. Show the relationship between Helix Fiduciary AG and HLX Nominees Ltd.

ii. Explain how transparency of funding is achieved by having a majority shareholder registered in the Virgin Islands

Information in the public domain held at Companies House shows that the Company Secretary is Wellco Secretaries Ltd.
Information in the public domain held at Companies House describes Wellco Secretaries Ltd. as a non-trading company with the most recent set of filed accounts showing the company to be dormant.

iii. Set out the role of Wellco Secretaries in managing and administering RIU

iv. Explain the benefit of having a dormant company to fulfil this role.

The Applicant's Response

i. Helix Fiduciary AG, a Swiss registered and regulated fiduciary provider, is the 100% shareholder of HLX Nominees Ltd. Nicholas Rothwell and Rico Seitz are the 100% shareholders of Helix Fiduciary AG.

ii. There is no requirement in statute or guidance that the funding arrangements of an NSIP must be 'transparent'. The statutory requirement, where a DCO includes powers of compulsory acquisition, is to provide a funding statement. The purpose of that statement is to show that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period. Where a DCO contains no compulsory acquisition powers, the funding of a project would not fall for consideration by the ExA and no issues as to the nature or source of the funding would arise. The sources of funding for this Project will be, and indeed have already been, scrutinised by HMRC and the ExA must rely on that body carrying out appropriate checks without trespassing beyond its own land-use planning remit.

For the avoidance of doubt, HLX Nominees Limited is a BVI registered company, but is managed and administered out of Switzerland. As it is owned by Helix and performs a role within legal structures for Helix Fiduciary AG it also falls under the review of the regulator in Switzerland. Helix and its clients are reviewed by the Swiss regulator and banks on a regular basis. Source of funds tests (Know Your Client – KYC) are applied to all funds. Any funds transferred to the UK are transferred under the laws of the EU. The funds that belong to the UK resident investors are then fully declared to HMRC. The Swiss resident investors who have been named to the ExA (Rothwell, Seitz and Huesler) have also reported to the Swiss Tax authorities.

iii. The registered office of RIU is with Wellden Turnbull "WT" a firm of chartered accountants based in Cobham, Surrey. The directors of RIU have instructed WT to act as company secretary so that the necessary UK filings for the company are taken care of on an annual basis. They use their in-house secretary which is a corporate secretary to act as RIU secretary. This is a very common practice to do within the UK. WT also act as the accountant for RIU

iv. Companies are dormant if they do not trade. A company acting as corporate secretary does not have to be a trading company. This is standard practice in the UK and indeed worldwide.

SHP Comments on the Applicant's Response

i. On the basis that Helix Fiduciary AG is the 100% shareholder of HLX Nominees Ltd and Nicholas Rothwell and Rico Seitz are the 100% shareholders of Helix Fiduciary AG, is the Applicant suggesting Nicholas Rothwell and Rico Seitz are the 100% beneficial owners of any shares held by HLX Nominees Ltd?

Or is it the case that the HLX Nominees Ltd is effectively a warehousing vehicle that holds shares on behalf of other investors that wish to remain disclosed, both in respect of this project and other projects in which Helix and their clients are involved?

SHP would note that the Offshore leaks database includes references HLX Nominees Ltd (https://offshoreleaks.icij.org/nodes/12108499) includes apparent shareholdings in other named companies such as Orkin Equities Corp., Eksander Investments Corp. and Penrick Enterprises Group S.A.. Based on the information available, all these companies appear to be incorporated in Panama in 2009 and have bearer shares within their capital structure.

ii. Firstly, it is worth noting that HLX Nominees, which holds 54% of the beneficial interest in the shares of the Applicant, has neither invested any funds into the Applicant nor has it committed to do so. Accordingly, even if HLX Nominees Ltd was a UK rather than a BVI company, it would not provide any more transparency over the funding arrangements of the Applicant. The evidence before the examination shows that MIO Investments Ltd is the only entity that may have put any funding whatsoever in the project and nothing is known about them and there is no information that demonstrates they have access to funding.

Secondly, as the ExA must be satisfied that funding is likely to be available, it is absolutely appropriate for the ExA to satisfy itself as to the source and availability of that funding. This is particularly important when an Applicant acts in an evasive manner and has been shown to misrepresent information and mislead the ExA. For example, the Applicant's claims that *"[T]he sources of funding for this Project will be, and indeed have already been, scrutinised by HMRC and the ExA must rely on that body carrying out appropriate checks"* is wholly inaccurate.

Attached as Appendix F.3.4 is email correspondence from the same individual that sent the HMRC letters submitted to the examination as part of Appendix 6 to the Applicant's Written Summary of Oral Submissions put at the first CA Hearing [REP5-]. As the email correspondence followed a prior telephone conversation, its purpose was confirmatory.

In response to point 5 “It would be normal for HMRC to accept confirmation that an investment is to be made using foreign income and taxes that would otherwise be taxable, without undertaking further diligence (or checks) on the source or origin of that funding”, HMRC responded as follows;

> *“We do examine the source of the investment if we have concerns about it, but not routinely. To be clear, the assurance process does not amount or purport to be “due diligence” in a commercial context as regards source.”*

The Applicant’s is willingness to mislead the ExA on this and numerous other matter demonstrates the contempt and lack of respect it has shown the examination and the numerous parties that are being forced to incur significant costs and resources in participating in the process.

Written Question F.3.5

Revised Funding Statement
The Revised Funding Statement [REP6-index number to be allocated] states at paragraph 15 that Helix has provided an explanatory letter about its role in the funding of the project, together with a confirmatory letter from PwC that the investors have unencumbered funds substantially in excess of the funds required for the completion of the DCO (namely blight claims, land acquisition and the cost of noise mitigation measures). These are attached to this statement.
The ExA notes that there is no letter from Helix attached to the revised Funding Statement.
Set out the status of this letter.

The Applicant’s Response

The letter referred to is the letter that was appended to the original Funding Statement [APP-013].

SHP Comments on the Applicant’s Response

Firstly, SHP would note that this letter is wholly out of date.

Secondly, if a document has been updated, surely it is the duty of the Applicant to ensure the revised document is accurate. It is wholly inappropriate for the Applicant to expect the examination to consider two different versions of the same document.

Thirdly, SHP would note that the Applicant submitted a revised Funding Statement at Deadline 7a [REP7a-007]. Despite the issue of the missing Helix letter being the subject of a written question, this latest Funding Statement still does not include a Helix letter.

Written Question F.3.6

Revised Funding Statement

The ExA notes that the confirmatory letter from PwC appended to the revised Funding Statement remains the same as that appended to the application version of the Funding Statement [APP-013].

This letter shows that a sum exceeding £15m is held at on behalf of unnamed clients at two branches of an unnamed bank in an unnamed jurisdiction some ten months before the submission of the revised Funding Statement.

i. Show how such partial information serves to address the test in Government guidance quoted in the revised Funding Statement to indicate how shortfalls in land acquisition and the costs of the project would be met.

ii. Explain why the holdings at the two separate banks were examined on different days and

iii. Show how any double counting of holdings resulting from, for example, transfers between banks in between the examination of the accounts was explicitly ruled out.

The Applicant's Response

i. The PWC letter shows that the Project has two investors with access to unencumbered funds which together exceed £30million. PwC was appointed by Helix to carry out the review because of its well established international reputation and credibility. The letter confirmed that PwC had identified the beneficial owners of the account holders and that each of the accounts had assets in excess of £15 million pounds. Helix controls the bank accounts and as directors and managers of M.I.O. can access those funds.

The Joint Venture Agreement commits the Applicant to fund all compulsory acquisition and mitigation costs. Letters from Calder & Co and BDB Pitmans reveal that to date the Applicant has spent in excess of £15.2million on the Project, which is a very clear indication of its firm commitment to delivering the Project. On the basis of the information before it, the ExA can be satisfied that the Applicant has access to significant funds and that those funds are committed to the Project and will suffice to cover compulsory acquisition and mitigation costs. The Guidance requires applicants to demonstrate that adequate funding is likely to be available to enable compulsory acquisition within the statutory period following the order being made, i.e. within 5 years of the grant of the DCO. In this case the Applicant has shown that it has access to the requisite funds now. Its confidence in the availability of that funding is such that it has agreed to shorten the 5 year statutory period for the exercise of compulsory acquisition to a single year. To the extent that the ExA has any residual concerns that those subject to compulsory acquisition will not be adequately

protected, the Applicant draws their attention to Articles 9 and 21 of the draft DCO which together mean that if the Applicant is not able to satisfy the Secretary of State within one year of the grant of the DCO that adequate funds are secured, it will not be able to commence the Project or to exercise any powers of compulsory acquisition.

ii. PwC carried out a review of the accounts which was independent of Helix. It appears that PwC's requests for information where received by the banks on different days. The systems of one of the branches could not provide a portfolio valuation on the specified past date but only on the day it received the written request.

iii. The Applicant confirms that there was no double-counting. Each of the separate accounts identified in the PWC letter separate contained in excess of £15m and each continues to contain in excess of £15m.PwC would not have produced the letter if there was any question of double counting. Helix has provided BDB Pitmans a copy of portfolio valuations dated 17/5/19 for the two same accounts and BDB Pitmans have provided a letter of confirmation that each of the same two accounts contains substantially more than the currency equivalent of cash and short term investments of £15 million, appended as F.3.6 in TR020002/D7a/TWQ/Appendices. Helix is a regulated body and would never either double count funds or claim the same funds in different accounts; at the very least because this could be considered money laundering.

SHP Comments on the Applicant's Response

i. There are a number of points in the Applicant's answer that require to be addressed;

a. Firstly, we would note that SHP has made a number of submissions regarding the lack of weight that can be given to the PwC Letter (including, but not limited to, (i) paragraph 2.10.5 of SHP's Comments on the Applicant's Written summary of oral submissions put at the Compulsory Acquisition hearing held on 20 March 2019 [REP6-052] and (ii) SHP's Comments on the Applicant's Answer to Second Written Question F.2.19 [REP7-014]).

The PWC letter referred to by Helix does not identify the beneficial owners of the accounts, nor does it provide any comfort that the beneficial owners are the same individuals that have provided funding to the project, nor does it provide any evidence that the funds are committed to, or capable of being used by MIO Investments. The PWC letter simply confirms that certain levels of funds are held in bank accounts that Helix operate on behalf of certain clients. Based on the wording of the PWC letter, these funds could be held on behalf of any of Helix's clients, and not necessarily those that are purported to have invested in the Applicant's project.

Furthermore, the PWC Letter is now nearly a year old, and therefore no reliance can placed on anything contained within it.

b. In its answer, the Applicant has now stated these accounts refer to 2 investors, yet this contradicts the Helix letter appended to the Applicant's Written Summary of Oral Submissions put at the CA Hearing [RREP5-011], which referred to three investors *"Mr XXXXXX, Mr XXXXXXXXXX and Mr XXXXXXXXXX".* The Applicant also notes in its answer to F.3.2 that there are 6 investors in total.

The Applicant further claims that Helix, *"as directors and managers of M.I.O. can access those funds"* yet there is nothing before the examination to demonstrate that M.I.O. Investments has access to any funding held by other parties.

c. It is SHP's understanding that the only version of the JV Agreement before the examination, is the version (including the Deed of Variation) supplied by the Applicant as Appendix 4 to the Applicant's Written Summary of Oral Representation put at Compulsory Acquisition Hearing [REP5-011]. The Applicant claims that the "Joint Venture Agreement commits the Applicant to fund all compulsory acquisition and mitigation costs."

This is not correct. The JV Agreement places an obligation on M.I.O. Investments Ltd to provide the funding. However, as SHP has explained in previous submissions, this is effectively meaningless (please refer to (i) section 2.10 of SHP's comments on the Applicant's written summary of oral submissions put at the CA hearing [REP6-052] and (ii) SHP's Comments on the Applicant's Answer to Second Written Question F.2.1 [REP7-014]).

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.

d. As noted in SHP's Comments on the Applicant's Answer to Second Written Question F.2.21 [REP7-014], the letter from Calder & Co provides no comfort that funds have been appropriately expended on the Project. SHP set out how the Applicant could easily provide much needed transparency.

It is also noteworthy that none of the RiverOak group of companies has ever been the subject of an audit, and indeed the company through which the expenses generally pass – RiverOak's Operations Limited – has missed the filing deadline of 31 May 2019 for submitting its accounts to Companies House. This should be a considered a red flag warning, particularly in a situation where the Applicant is fully aware of the concerns regarding the lack of transparency it has afforded this examination, and the ExA's previous requests for this information. Again, it appears to be a tactic to avoid proper scrutiny of the Applicant's case at the hearings. There is no other reasonable explanation.

e. As set out in SHP's previous submissions to the examination (including (i) Appendix 6: Compensation Assessment, Avison Young appended to SHP's Written Representations [REP3-025]; and (ii) SHP's Comments on the Applicant's Responses to the Written Questions, including F.1.18

and F.1.12 [REP4-067] it has been clearly demonstrated that the ExA cannot be satisfied that the funding the Applicant claims to have *"will suffice to cover compulsory acquisition and mitigation costs."*

f. The rationale given by the Applicant to support its claim that *"any concerns that those subject to compulsory acquisition will not be adequately protected"* show a complete disregard to other affected parties.

iii). The Applicant is not in any position to provide confirmation that there has been no double counting. Similarly, The Applicant's claim that *"PwC would not have produced the letter if there was any question of double counting"* is not supported by any evidence. PwC make specific reference to the fact the statements were provided on dates that were 9 days apart. Based on the information contained within the letter, it is not possible to assert that PwC made any checks to ensure that there was no double counting.

Written Question F.3.7

Revised Funding Statement
The Revised Funding Statement [REP6-index number to be allocated] states at paragraph 15 that:
"So far, £15.2 million has been expended on the DCO process. Funds are drawn down by RiverOak on demand under the provisions of the joint venture agreement between the parties."
i. From where are these funds drawn down?
ii. Indicate where this expenditure is shown on any audited or unaudited accounts submitted to the ExA thus far; or
iii. Provide such accounts;
iv. If they are drawn down from the accounts covered in the PwC confirmation letter, then what is the current balance of those accounts?

The Applicant's Response

i. The letters from the accountants Calder & Co and from BDB Pitmans show that to date the Applicant has spent some £15.2million on the Project. Those funds were drawn down from the funders, via M.I.O Investments Ltd.

ii. The letter from Calder & Co, accountants, at page 325 of the Appendices to the Applicant's answers to the second written questions [REP6-014] , together with the completion certificate from BDB Pitmans, confirms the sums that have been spent on the Project to date. Other than the Jentex acquisition all expenditure has been through RiverOak Operations Limited. As explained in the letter from Calder & Co submitted with responses to the Second Written Questions (Appendix F.2.4 in REP6014), the accounts of RiverOak Operations Limited to 31 August 2017 have not yet been

finalised. Calder & Co are currently in the process of finalising those accounts which will be filed at Companies House within the next three weeks and will be supplied to the ExA when available. Expenditure on the Project appears within the profit and loss account. The acquisition of the Jentex site took place within the current accounting year and is not yet shown in a set of formal accounts for RiverOak Fuels Limited. However, full details are recorded in the company's book keeping records which were inspected by Calder & Co prior to writing the letter.

iii. There are currently no finalised accounts, as explained above.

iv. The sums expended to date were not drawn down from the accounts covered in the PwC confirmation letter. The sums available in each of those accounts continues to exceed £15m (i.e. £30m in total) as confirmed in the letter from BDB Pitmans referred to above.

SHP Comments on the Applicant's Response

i. The limited assurance letter provided by Calder & Co does not substantiate that the Applicant has actually spent £15.2million on the Project – it appears to be no more than a check of amounts going through bank accounts. As noted in SHP's Comments on the Applicant's Answer to Second Written Question F.2.21 [REP7-014], the letter from Calder & Co provides no comfort that funds have been appropriately expended on the Project. SHP set out how the Applicant could easily provide much needed transparency and also explained why any clawback of business investment relief could have a material impact on the tax position of investors/funders and their ability to provide further funding (for which there is currently no evidence before the examination).

ii. Please refer to comments on (i) above. SHP would also note that no financial statements of any company within the RiverOak Group have been audited. Therefore, no party other than the respective Boards' of each company, stand behind the information contained with the financial statements.

iii. It is wholly unsatisfactory that the Applicant has failed to provide the financial statements of RiverOak's Operations Limited that had previously been requested by the ExA. There is no reasonable excuse for the Applicant's failure to provide this information, and more recent management account information, which would at least shine a fraction of transparency. The fact that the Applicant delayed submitting what should be straight forward accounts until the last possible day (and in paper form to prevent them being discussed at the Hearing) raises a red flag. As noted above, this appears to be a deliberate tactic to avoid proper scrutiny of the Applicant's case at the hearings or during the remainder of the examination. There is no other reasonable explanation.

iv. The Applicant's answer raises further concerns regarding the source of any funding and whether this is consistent with information provided to HMRC and this examination. SHP's Comments on the Applicant's Answers to Written Questions F.2.15 – F.2.17 explained the inconsistencies between the information provided by the Applicant and the published accounts.

Written Question F.3.8

Revised Funding Statement
The Revised Funding Statement [REP6-index number to be allocated] states at paragraph 13 that:
"…the full cost of the project will be met by private sector investors once the DCO is granted – such details cannot yet be finalised."

If details cannot yet be finalised, state how the ExA is to provide an evidenced recommendation to the Secretary of State that funding for the proposed scheme is available and that the issue of funding is not a potential risk or impediment to implementation of the scheme that has not been properly managed?

The Applicant's Response

DCLG Guidance related to procedures for the compulsory acquisition of land (September 2013) expressly recognises that prior to the grant of a DCO "*it may be that…details cannot be finalised until there is certainty about the assembly of the necessary land"* and in such circumstances the applicant should provide an indication of how any potential shortfalls are intended to be met (paragraph 17). The government plainly understands that funding decisions on major infrastructure projects may not be made until there is certainty as to whether the project will be permitted to proceed with the requisite land assembly powers. That of itself cannot be a potential risk or impediment to implementation or if it is, it is one that applies to all DCOs.

As required by the Guidance, the Applicant has given an indication of how any potential shortfalls are intended to be met. The Funding Statement explains that on the grant of the DCO funds will be raised from investors, many of whom have already approached the Applicant.

There is no requirement in statute or guidance that all funds to deliver the Project are available prior to the grant of development consent. That would be unrealistic. It is the granting of the DCO that provides the certainty that allows funding arrangements to be finalised. No project the subject of a DCO application can be guaranteed to be funded and built at the time of the examination into the application, nor could that reasonably be expected.

SHP Comments on the Applicant's Response

The ExA must have comfort that there is a reasonable prospect that the Applicant will be able to raise funding to implement its scheme. SHP would refer to ExA to Appendix 1 of its Witten Summary of Oral Representations put at the 2nd CA Hearing [REP8-reference to be allocated].

The ability to fund infrastructure is dependent on a number of factors such as viability of the project, the security of any investment, the nature of the risks associated with the delivery and operation of the project and not least, the quality, experience and track record of the developer. Based on the information before the examination, the Applicant would not get past first base on any of these points.

Written Question F.3.9

Revised Funding Statement
The Revised Funding Statement [REP6-index number to be allocated] states at paragraph 13 that:
"*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*."
With this apparent reliance on investors who are likely to come forward, state how the ExA is to provide an evidenced recommendation to the Secretary of State that funding for the proposed scheme is available and that the issue of funding is not a potential risk or impediment to implementation of the scheme that has not been properly managed?

The Applicant's Response

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 Guidance recognises that it may not be possible to finalise funding arrangements until there is certainty as to the assembly of land following the grant of the DCO. The fact that final funding decisions have not been made at this stage, when the application for consent is still under consideration is entirely in line with other DCOs that have been subject to examination. Where details cannot be finalised, the Guidance explains that applicants should provide "*an indication"* of how potential shortfalls are intended to be met. This is precisely what the Applicant has provided. Shortfalls are intended to be met through private funding from one or more investors. The absence of final funding decisions does not present a risk or impediment to the implementation of the scheme. It is unsurprising and entirely in accordance with the position on the vast majority of all DCOs that have been made to date.

SHP Comments on the Applicant's Response

The Applicant has not put any information before this examination that can be fairly and properly tested.

In order to address the Applicant's answer, SHP would also refer to ExA to Appendix 1 of its Witten Summary of Oral Representations put at the 2nd CA Hearing [REP8-reference to be allocated].

Written Question F.3.10

Revised Funding Statement
The application version of the Funding Statement [APP-013] stated at paragraph 14 that:
"*If further evidence of funds is required for the satisfaction of the Examining Authority as to their availability then RiverOak would be happy to supply it*."

The ExA notes that no such statement is contained in the revised Funding Statement [REP6-index number to be allocated].
Does this indicate that the Applicant is unwilling to provide any further information on funding in addition to that already provided at, or before, Deadline 6?

The Applicant's Response

No, the statement was removed because the Applicant has provided significant additional information as to the evidence of funds since the original Funding Statement which it anticipated would have satisfied the ExA as to the availability of funds.

Indeed, that additional information is listed in the text immediately following the deleted statement and is the reason the deleted statement is no longer necessary. The Applicant remains willing to provide further evidence of funds should the ExA consider that to be necessary.

SHP Comments on the Applicant's Response

On any objective basis, the Applicant's statement that it *"remains willing to provide further evidence of funds should the ExA consider that to be necessary"* appears disingenuous.

Throughout this examination, the Applicant has consistently failed to answer the ExA's questions, rebuffed the ExA's requests to provide information and failed to honour commitments it had given. This is despite being put on notice at the outset that its Funding Statement represented a material risk to the examination.

Written Question F.3.11

Revised Funding Statement
Paragraph 16 of the revised Funding Statement [REP6-index number to be allocated] lists the information provided since the start of the Examination.
i. Show where in these nine pieces of information the ExA can find independent proof that the sum of £13.1m contained in Article 9 of the draft DCO is held by one or more named firms, bodies or individuals whose financial and other details are open to public scrutiny in the UK.

ii. Show where in these nine pieces of information the ExA can find independent proof that one or more named firms, bodies or individuals whose financial and other details are open to public scrutiny in the UK are committed to funding the construction and set-up costs of the proposed project.

The Applicant's Response

i. The letter from PwC supplied with the original Funding Statement provides independent proof of such funds being available. The Joint Venture Agreement commits the Applicant to funding the costs of compulsory acquisition and noise mitigation. There is no requirement in statute or guidance that the holder of such funds must be a body or individual whose financial and other details are open to public scrutiny in the UK. However, the ExA can be assured that the source of funding will be scrutinised by HMRC which is the appropriate body for that task. The ExA should assume that other regulatory bodies, including HMRC, will perform their roles properly and there is no suggestion in either legislation or guidance that that it is for an examining authority to 'vet' the source of foreign direct investment into the UK. If that was the case, bearing in mind that so much of UK infrastructure is funded by such investment (e.g. Hinkley Point C and Thames Tideway Tunnel) it would have been made absolutely clear in guidance from MHCLG; it has not been.

   The ExA can be satisfied that those subject to compulsory acquisition are adequately protected by Article 9 of the draft DCO, read together with Article 21. The effect of those Articles is that the Applicant cannot compulsorily acquire any land or commence the Project until it has secured adequate funding, to the satisfaction of the Secretary of State within one year of the grant of development consent. In the event that it is unable to do so, it will not be able to acquire land by compulsion or implement the Project.

ii). As set out above, 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. HMRC scrutinises overseas investment in the UK without opening the details of private investors to "public" scrutiny. As to the commitment to the Project, the Applicant has demonstrated that there are private investors in the Project with significant resources available to them. To date some £15.2m has been spent on the Project, money that would be wasted if the Project is not seen through to delivery. That provides a clear indication of the Applicant's commitment to this Project. As explained above, in line with almost all previous DCOs, the final decisions on the funding of the Project will not be made until such time as the DCO is granted. There is no requirement that funds must be committed to cover the entire project at the time of examination nor could there reasonably be. No applicant could guarantee a commitment to fund the entirety of a project before consent had even been granted.

SHP Comments on the Applicant's Response

i. Firstly we would refer the ExA to SHP's comments on the Applicant's answer to written question F.3.6 above regarding the lack of weight that can be afforded the PwC letter and the Applicant's misrepresentation of the JV Agreement.

Secondly, we would refer the ExA to our comments on the Applicant's answer to written question F.3.3, which explains why the Applicants' claim that *"the ExA can be assured that the source of funding will be scrutinised by HMRC which is the appropriate body for that task"* is misleading and supports the view that it is seeking to avoid the proper scrutiny of its application.

The Applicant makes reference to Hinkley Point C and Thames Tideway Tunnel projects to attempt to justify its position on funding. It is unclear why the Applicant considers the comparisons are helpful to its case.

To demonstrate this, we refer to relevant commentary contained in the respective panel reports/recommendations that were submitted to the Secretary of State.

Hinkley Point C Panel's Report to the Secretary of State dated 19 December 2012

As demonstrated from the extracts from (i) paragraphs 7.34 – 7.36 (Availability of funds for compensation) and (ii) paragraphs 7.81 – 7.85 (Funding) the ExA did not adopt a light touch approach to examining the funding position, despite the Applicant being ultimately owned by EDF Holdings (80%) and Centrica (20%).

The ExA considered the initial position set out in the Applicant's Funding Statement to be inadequate and, in response, the Applicant provided a signed parent company guarantee supported by a unilateral undertaking (see also para 7.17 on Panel's report) to provide certainty of funding.

Furthermore, it is clear that none of RiverOak Manston Ltd, RiverOak Investments (UK) Ltd and M.I.O. Investments Ltd are remotely comparable to EDF Holdings Limited or Centrica.

*"**Availability of funds for compensation***
7.34 Accompanying the Statement of Reasons was a Funding Statement (APP281) in which the Applicant stated that it is a wholly owned subsidiary of NNB Holding Company Limited which is a joint venture company with 80% owned by EDF Holdings Limited and 20% owned by GB Gas Holdings Ltd (Centrica). There is a Shareholders Agreement which governs the basis on which the Applicant will be financed.

7.35 The Applicant has taken expert advice on the likely cost of implementing the proposed development, including the cost of construction and the funding of the necessary land acquisition. The Applicant has assessed the commercial viability of the proposed development in the light of this information and, if development consent is granted, the development of Hinkley Point C would be funded by a cash call process governed by the Shareholders Agreement. It concludes that the availability of funding would not be an impediment to the implementation of development or to the acquisition of land deemed necessary.

7.36 We requested details of the terms of the Shareholders Agreement (PDEC12) and subsequently its termination provisions (PDEC24). We inquired of the Applicant (PDEC24) whether a parent company guarantee could be provided and, following the Applicant's disinclination to do so, the matter was discussed at the compulsory acquisition hearing. As a consequence of the discussions at the hearing the Applicant offered (subject to Board approval) to provide a parent company guarantee up to a limit of £10million. This was subsequently provided (PD115)."

"Funding
7.81 We are required to make a judgment as to whether adequate funding would be available to meet compulsory acquisition compensation in the event of compulsory acquisition powers being granted. In doing so we have had regard to the powers of the Act, Guidance and the Human Rights Act 1998. Having read the Applicant's Funding Statement (APP281) we considered the position was inadequate in terms of ensuring that the necessary resources would be available to the Applicant.

7.82 Exchanges with the Applicant on this matter (see para 7.36 above) considered in particular the fact that the Applicant is a joint venture company funded by its shareholders through a Shareholders Agreement, and the Shareholders Agreement included default provisions which could be triggered if certain circumstances arose. We were concerned as to the adequacy in terms of security of compulsory acquisition funding in the event, however remote, of the dissolution of the Applicant company after the compulsory acquisition powers had been exercised.

7.83 At the compulsory acquisition hearing we discussed this with the Applicant. The Applicant pointed out that Guidance stated that an applicant should be able to demonstrate that there is a reasonable prospect of the funds becoming available. Nevertheless the Applicant offered to review the position.

7.84 The Applicant having given further consideration to the question of funding for compulsory acquisition compensation offered to provide, subject to Board approval, a parent company guarantee secured by a unilateral undertaking in favour of the local planning authority.

7.85 The parent company guarantee in the sum of £10million was provided by the Applicant (see para 7.17 above) and, on the basis of such funding security being in place, we consider the Funding Statement and subsequent proposed documentation as set out above adequate to support a compelling case for the grant of compulsory acquisition powers."

Thames Tideway Tunnel ExA's Report and Recommendation to the Secretaries of State dated 12 June 2014

It is important to note that the Applicant was Thames Water Utilities Limited, which had a regulatory capital value of £10,897 million.

The section on Adequacy of funding (from paragraph 19.431) made clear that the ExA was satisfied that *"in respect of all the above elements of CA compensation, funds have either been made available to the Applicant through its regulatory process or it has approval through that process to incur the necessary expenditure"* (paragraph 19.434). Other parts of the report note that the funding was approved by Ofwat.

With regard to the funding of the construction and operation of the project, SHP would refer the ExA to section 6 of the Funding Statement (September 2013). This is a highly complex project and the Funding Statement explained in detail how the project would be funded by an IP established under the Water Industry Act 1991 and Water Industry (Specified Infrastructure Projects) Regulations. It also provided evidence to demonstrate that there was an established regulatory regime for funding delivery of projects of that nature by sewerage undertakers generally.

The ExA acknowledged the detailed information that had been submitted by the Applicant (e.g. please refer to paragraph 19.63), however given the complexity of the process and requirement to finalise a delivery model the ExA stated that it was not able to make a judgement on securing funds for delivering the project. In the adequacy of funding section the ExA stated the following in paragraph 19.435;

"As far as non-CA costs are concerned ie the funding of the construction and operation of the project, whilst certain specified works will be carried out by the Applicant and funds will have to be secured by it through its AMP process, it is intended that the majority of the works would be carried out by the infrastructure provider (IP), yet to be appointed, who would provide or procure the necessary funding. In these circumstances the Panel is clearly not in a position to make a judgement on the securing of the funds for the project and the Secretaries of State will need to be certain that they have confidence in the process with regard to certainty on funding and the IP before making their final decision."

Written Question F.3.12

Revised Funding Statement
Paragraph 16 of the revised Funding Statement [REP6-index number to be allocated] lists the information provided since the start of the Examination.

Paragraph 16c states that one item of information is:
"*Information about the project's investors, their assets, expenditure on the project to date and their use of Business Investment Relief to invest in UK infrastructure (appended to REP5-011*)"
Show where in Appendices to REP5-011 information is set out showing the assets of named investors.

The Applicant's Response

Appendix 5 to **REP5-011** (which starts on page 218) provides information about the assets of the project's investors by reference to the PwC letter appended to the Funding Statement [**APP-013**], which confirms that the investors have unencumbered assets of at least £15m in each of two bank accounts. The cost

of obtaining the letter from PwC given the rigour of the checks they undertook was 11,680.36 Swiss francs, which gives an indication of the weight that should be placed on it.

The names of the investors are not provided. The concern of the ExA is to ensure that the Applicant is likely to have funds available to enable compulsory acquisition. The purpose of the information provided by the Applicant is to satisfy the ExA that it has access to such funds and that they are committed to the Project through the Joint Venture Agreement. The identity of the investors is not material to the ExA's recommendation. Again, 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 to compensation those persons subject to compulsory acquisition.

SHP Comments on the Applicant's Response

We would refer the ExA to previous comments regarding the weight that can be applied to the PwC Letter. It is clear that the submission of the PwC Letter was simply an exercise in distraction, as is the assertion that it carries weight because it cost 11,680 Swiss francs. It is only evidence that can carry weight and the PwC letter contains nothing that directly substantiates any assertions made by the Applicant.

As noted in comments above, there is no evidence before the examination that demonstrates M.I.O. Investments Ltd has any funding that is committed to funding any costs incurred by the Applicant.

Written Question F.3.16

Revised Funding Statement

Paragraph 20 of the revised Funding Statement [REP6-index number to be allocated] provides a summary of various categories of funding.
The Funding Statement submitted as part of the application [APP-013] stated that £500,000 for blight claims was in RiverOak's accounts.
The Revised Funding Statement [REP6-index number to be allocated] states that £500,000 for blight claims is in RiverOak's accountant's accounts.

i. Provide evidence of the transfer of this amount between the two accounts;
ii. Explain why the dormant company accounts for the Applicant approved by the Board in April 2019 show no changes of assets from 31 July 2017 to 31 July 2018.
iii. State who is RiverOak's current accountant and provide evidence that this sum is in its accounts.

The Applicant's Response

i. The £500,000 is shown as a balance in a client account held by Calder & Co for the Applicant.

ii. RiverOak Strategic Partners Limited holds only an investment in the trading subsidiary companies. At both 31 July 2017 and 31 July 2018, these investments were held at cost and had not changed. The assets in the trading subsidiary, RiverOak Operations Limited, have changed over this time period and the changes are reflected in that company's annual accounts. Following 31 July 2018 RiverOak Strategic Partners Limited acquired further investments in other subsidiary companies and these additional investments will be reflected in the company's next annual accounts.

iii. Calder & Co are the Applicant's accountants and this evidence has already been provided at Appendix 7 of [**REP5-011**].

SHP Comments on the Applicant's Response

i. The ExA clearly asked the Applicant to provide evidence to substantiate the statement in its original Funding Statement [APP-013].

The Applicant has clearly dodged the question as it would appear apparent that that it is unable to substantiate the assertion that £500,000 for blight claims was in RiverOak's accounts. This inability to substantiate assertions made within its application documents has been a common feature of the examination phase. Accordingly, it is SHP's considered view that no weight can be applied to any of the Applicant's assertions that are not substantiated with proper evidence.

ii. The Applicant appears to have restated its accounts. As all funding has gone into subsidiary companies in the form of loans from MIO Investments, there is no net asset value in the subsidiaries of the Applicant i.e. the shares have no value.

iii. The Applicant notes that the evidence that the £500,000 was in Calder & Co's client account was provided in [REP5-011]. In paragraph 2.12 of SHP's Comments on the Applicant's Written Summary of Oral Submissions put at the CA Hearing [REP6-052], SHP note that the statement provided by the Applicant shows a loan of £500,000 was made to RiverOak Manston on 18 March (although the amount was not showing in the ledger balance). We would note that RiverOak Manston Ltd is only a 10% shareholder in the Applicant, not the Applicant or a subsidiary of the Applicant, and therefore it is not clear that these funds would be available. It would also appear to show demonstrate that these funds were not held by the Applicant as claimed in its original Funding Statement.

It is also important to note that **none** of the financial statements or accounts of the Applicant, it subsidiaries and shareholders have been audited.

Written Question F.3.17

An e-mail dated 6 April 2019 submitted by BDB Pitmans LLP [AS-072] cites one reason for not identifying the potential investors in the proposed scheme as being the level of unwanted contact some of them received when they were previously identified in connection with a CPO with TDC.

Evidence from Cllr. Chris Wells, former Leader of TDC, [REP4-081] states that:
"I asked for a credit note, or bank guarantee, of the availability of £19m for that first two years. They left my office promising just that with a letter of credit from a recognised bank. Within days it was being referred to as a letter of comfort; then a letter of assurance. When it finally arrived it was an expression of interest from a well known name in aviation financing, caveated that no financial reliability could be taken from this expression of interest. To overcome this, it was accompanied by several letters of support, pledging funds, but with all the details of identity of the investors redacted so no checks on their wealth could be run."
If all the details of the investors were redacted, **show how and where their identities were identified.**

The Applicant's Response

Two potential investors wrote letters which were sent to Thanet District Council in un-redacted form. The first was from the Airbus Group (current annual revenues €63 billion) dated 14th September 2014 marked "Strictly Confidential" and the second was from Orix USA Corporation (part of Orix Corporation of Tokyo current annual revenues $23.6 billion) dated 3rd August 2015 marked "Highly Confidential". Both letters are attached in their un-redacted form at Appendix F.3.17 in
TR020002/D7/TWQ/Appendices. In both cases details of Airbus and Orix respectively appeared in the public domain. The Applicant is not able to confirm how they came to be in the public domain. Both companies reported to RiverOak Investment Corp (the Applicant's predecessor) that various attempts at communication with them by e-mail and telephone had been made from persons in East Kent. The reference to the sum of £20 million in the Orix letter is to the estimated cost of returning Manston to full operations, the airport having been closed less than three months previously.

SHP Comments on the Applicant's Response

SHP would note that there is no evidence before the examination to substantiate the claims made by the Applicant.

Additional Comments from York Aviation

"We note that the two investors cited as interested in investing in Manston in 2014/5 was at a time when the estimated cost of development was £20 million. There is a vast difference between the viability and attractiveness of an investment of £20 million compared to some £306 million, of which £186 million needs to be spent in the very short term.

In any event, the letter from Airbus makes clear that it was solely interested in the potential for developing an aircraft recycling operation at Manston rather than investing in the redevelopment of the Airport itself. Since then, Tarmac Aerosave, in which Airbus is an investor, has invested in further recycling facilities in Tarbes and Toulouse (see appendix to York Aviation Note on the Socio-economic Hearing) so is less likely to be interested in such facilities in Manston now than in 2014."

Written Question F.3.19

Question F.2.22 quoted the Applicant's Written Summary of Case put Orally Compulsory Acquisition Hearing and associated appendices which states at paragraph 3.15 that:
"…[the] funders continue to have a further £30m set aside to include its costs until the grant of the DCO and to pay for land acquisition and noise mitigation costs."
The Applicant's response to F.2.22 [REP6-index number to be allocated] cites the £15 million committed in the joint venture agreement and states that there are further funds available when required albeit not specifically committed to the project.
Does the figure of £30 million quoted above include funds that are not specifically committed to the project?

The Applicant's Response

Yes. As is apparent from the Joint Venture Agreement, the Applicant is committed to the costs of compensation and noise mitigation to a total of £15 million. The ExA can therefore be satisfied that the Applicant has access to sufficient funds and that they are committed to the Project. The PwC letter shows that the Project funders have access to unencumbered funds significantly in excess of that figure, albeit they are not specifically committed to the Project at this stage and nor is there any requirement in statute or guidance that they should be. It would be unrealistic to expect such funds to be set aside for a long period absent any certainty as to the outcome of the DCO process.

SHP Comments on the Applicant's Response

SHP would note that there is no evidence before the examination that any specific funds have been committed to the Applicant's project.

This seems to have been acknowledged by the Applicant (albeit its answer is highly contradictory) when it states that the funds referred to in the PwC letter *"are not specifically committed to the Project and nor is there any requirement in statute or guidance that they should be".*

Written Question F.3.20

The Applicant's response to F.2.26 [REP6-index number to be allocated] confirms the existence of a Business Plan for the proposed scheme but states that this is a commercially sensitive internal document.
Show how, in the absence of a submitted business plan, the ExA may submit an evidenced recommendation to the Secretary of State as to whether the proposed scheme is intended to be independently financially viable?

The Applicant's Response

The Applicant is satisfied that the Project is independently viable. Indeed, it would not be eligible for any public funding. The Applicant has committed very substantial funds to the Project to date because of its confidence in its viability.

However, as explained above, the requirement for a funding statement only arises where a DCO includes powers of compulsory acquisition and the information as to the funding must be viewed in that context. The requirement to provide as much information as possible about the resource implications of the project cannot mean that the funding statement required for compulsory acquisition should be treated as a surrogate for testing the economics of the Project as a whole. The Funding Statement is provided and examined so as to protect those subject to compulsory acquisition and to ensure insofar as is possible that their land will not be taken by an applicant unable to compensate them for that acquisition. In this case, those subject to compulsory acquisition are protected through Article 9 of the draft DCO which prevents the Applicant from acquiring their land or commencing the Project until such time as the Secretary of State has confirmed in writing that funds are secured. If that is not achieved within one year of the grant of the DCO, then the Applicant will not be able to compulsorily acquire land or implement the Project.

As to the viability of the Project as a whole, the Applicant is not in a position to disclose its confidential business plan to the public. To do so would reveal sensitive information to competitors and potential clients and is not commercially appropriate. The Applicant is not aware of detailed business feasibility plans being required of other applicants for development consent or, indeed, that this is required by legislation or guidance. The Applicant has, however, provided the ExA with its business model at Appendix F.1.5 in [**REP3-187**].

The Applicant provided a summary of the *Chesterfield* case in Appendix 9 of the summary of its case at the March compulsory acquisition hearing (page 266 of [**REP5-010**]). In that case compulsory acquisition powers were granted notwithstanding that the proposed development was only marginally viable such that there was a real risk that it would not be carried out. In order to authorise the compulsory acquisition of land, the Secretary of State must be satisfied that there is a compelling case in the public interest but that does not necessarily require him, as a condition precedent to authorising the acquisition, to be satisfied on the balance of probabilities that the proposed development will go ahead if the land is acquired.

In the event that the Applicant cannot secure funds for compulsory acquisition within one year of the DCO, no compulsory acquisition will be possible. In the event that land is compulsorily acquired such that it is owned by the Applicant and the Project then proves unviable such that it cannot be delivered, then none of the impacts associated with its operation will arise.

SHP Comments on the Applicant's Response

SHP would refer to ExA to Appendix 1 and Appendix 2 of its Written Summary of Oral Representations put at the 2nd CA Hearing [REP8-reference to be allocated], which address the matters set out in the Applicant's answer.

THIRD WRITTEN QUESTIONS ON NEED

SHP would note that the Note from York Aviation attached as Annex 1 provides comment on behalf of SHP on the Applicant's answers to the third written questions on Need.

SHP would also note that it provided an early submission, providing detailed commentary on the Applicant's answer to question ND.3.9 [AS-131]. SHP would respectfully request that this is read in conjunction with York Aviation's comments.

THIRD WRITTEN QUESTIONS ON OPERATIONS

SHP would refer the ExA to previous submissions provide relevant comment / rebuttal of the Applicant's answers to the following questions;

- OP.3.2: please refer to SHP response on OP.3.3 [REP7a-044]
- OP.3.4: please refer to York Aviation comments on OP.2.2 [REP6-053]
- OP.3.5: please refer to SHP response on OP.3.5 [REP7a-044]
- OP.3.6: please refer to [REP5-029 Appendix NOPS.1.11] and additional issues raised in respect of HRDF – see below on OP.3.12
- OP.3.10: multiple submissions - please refer to SHP comment on the Applicant's answer to OP.2.7 [REP7-014]
- OP.3.12: multiple submissions - please refer to SHP response to CA.3.6 [REP7a-044]

SHP would note that the York Aviation note attached as Annex 1 provides further commentary on the Applicant's answers to OP.3.7, OP.3.8, OP.3.9 and OP.3.10.

Question 3.8: The York Aviation note picks up on the Applicant's answer to OP.3.8 part (ii), however it is also worth flagging that the Applicant has misunderstood the CAA statistics again in part (i) of its answer.

> The Applicant may be correct to note that domestic mail is counted both at the airport of arrival and the airport of departure, but the rest of its answer is inaccurate.
>
> As Table 17 of the 2018 CAA statistics show, 20,425 tonnes of domestic mail passed through EMA airport in 2018. This was predominantly mail moving to / from Edinburgh airport, which the CAA statistics show handled 21,307 tonnes of domestic mail.

If the exam question was *"what tonnage of mail was carried between UK airports in 2018"*, it would be correct to add up the domestic mail tonnages reported for each individual airport and divide by two.

However, if the objective is to answer the ExA's question, what logic is there in applying an arbitrary 50% discount to the figure of domestic mail that was actually "handled" at EMA. It is hugely frustrating that SHP is consistently having to incur "wasted" expense correcting the uninformed assertions of the Applicant.

THIRD WRITTEN QUESTIONS ON SOCIO-ECONOMICS ISSUES

SHP would note that the York Aviation note attached as Annex 1 provides comment on behalf of SHP on the Applicant's answers to the third written questions on Socio-Economic issues. SHP would also refer the ExA to the written summary of oral representations put at the Socio-Economics Hearing {REP8-reference to be allocated] that provides further detailed evidence to support SHP's case that the assessment of environmental effects in the ES is fundamentally flawed.

THIRD WRITTEN QUESTIONS ON TRAFFIC AND TRANSPORT

SHP has largely not involved itself in matters of transport. However, with regard to third written question TR.3.44, SHP would note that it has recently emerged that the Applicant has an overprovision of 1,150 car parking spaces against even the year 20 forecasts. At the Transport hearing RSP appeared to state that they would not develop out these parking spaces if not needed. This is one example of where the Applicant has not even attempted to properly justify the land take in terms of CA powers.

APPENDICES

Annex 1:	York Aviation Note on behalf of SHP
Appendix CA.3.30:	Email correspondence between (i) the Applicant and SHP and (ii) CBRE and Avison Young.

York Aviation

Manston Airport NSIP

Comments on Applicant's Deadline 7a Responses to Third Questions from the Examining Authority

Introduction

Once again, as with other submissions made by the Applicant, we note that the answers given are in places inconsistent and contradictory, and this serves to undermine their credibility and to cast further doubt upon the overall robustness of the need and socio-economic cases, which feed into whether there is a compelling case in the public interest in relation to the proposed compulsory acquistion. Many of the responses simply repeat material already submitted and do not provide the further requested clarification nor, in some cases, respond to the question put.

We comment here on points of relevance to the need case, the forecasts of usage for the development that underpin the entire NSIP Justification, including the assessment of socio-economic impacts, as well as the scale of facilities required. We have referenced our answers to the ExA's question number but do not repeat in full the question and answer given. We cross refer as required to the York Aviation 2017 Report, the 2019 Update Report (appendix 4 of REP3-025), our previous comments on the Applicant's Responses to the ExA's Second [REP4-065] and Third Written Questions and submissions made following both Compulsory Acquisition Hearings, the Need and Operations Hearing and the Socio-Economic Hearing as required where points have already been addressed in our evidence. Where we have nothing to add to our previous analysis, we do not comment on the specific question and answer.

Question	Commentary
F.3.17	We note that the two investors cited as interested in investing in Manston in 2014/5 was at a time when the estimated cost of development was £20 million. There is a vast difference between the viability and attractiveness of an investment of £20 million compared to some £306 million, of which £186 million needs to be spent in the very short term. In any event, the letter from Airbus makes clear that it was solely interested in the potential for developing an aircraft recycling operation at Manston rather than investing in the redevelopment of the Airport itself. Since then, Tarmac Aerosave, in which Airbus is an investor, has invested in further recycling facilities in Tarbes and Toulouse (see appendix to York Aviation Note on the Socio-economic Hearing) so is less likely to be interested in such facilities in Manston now than in 2014.
ND.3.1	The Applicant claims that *"The forecast assumed that costs of operating from the airport would be in line with other cargo airports – i.e. that cost factors would not unduly attract nor detract the potential market. Separately, the Applicant has commissioned a viability assessment which confirms that the Project can be viably delivered in such a way that would be competitive in the market and would not detract*

	potential operators." This cannot be correct when the prospective aeronautical revenues are compared with relevant benchmark airports (see York Aviation Note on the Second Compulsory Acquisition Hearing).
ND.3.2	This answer provides information about the catches of fish landed at ports in the vicinity of Manston. This is simply irrelevant as to whether any of that fish is for export. It provides the ExA with no information on the likelihood of there being sufficient volumes of locally caught fish to justify a single freighter operation to any particular overseas destination. It is of no assistance to the ExA at all.
ND.3.3	The answer seeks to suggest that the 'cold chain' delivery temperature control problem arises due deficiencies in the facilities at airports but the full document appended (Appendix 8 to the written answers) makes clear that the problem principally arises during the aircraft loading and unloading process. Hence, state of the art facilities at Manston would not address this issue, which is, in any event, more likely to be an issue in the hotter destination countries for vaccines than in the UK.
ND.3.4	In this answer, the Applicant acknowledges that automation can result in fewer employees being required for some goods. This inevitably has consequences for the forecasts of on-site employment at Manston, which would suggest that it is likely to be lower again than assessed. To the extent that automation is introduced, we would expect the on-site employment density to fall below the 650 jobs per million WLUs at Prestwick or in airport related activities at East Midlands.
ND.3.5	We note that, in answer to the ExA's question regarding discussions with the cargo industry that corroborate the forecasts, the Applicants cite discussions with other airport operators, who would surely be unlikely to provide robust information to a potential competitor. Similarly, discussions with trade organisations, business groups, academics and the DfT do not represent discussions with anyone who might actually operate freighter aircraft from Manston. Furthermore, we are not told what these organisations said in relation to Manston. We note that the Applicant has *"reached out"* to the new integrators with a view to initiating discussions but it does not tell the ExA whether there was any response, positive or otherwise.
ND.3.6	This answer once again seeks to assert that there is a stand capacity problem at East Midlands, specifically at night. There is no evidence that this is a material constraint as EMA shows itself willing and able to construct more aircraft stands when required by the cargo sector. This is evidenced by the stands currently under construction for UPS, as acknowledged in the answer. In any event, to the extent that there is a shortage of freighter stand capacity at night at East Midlands, Manston is hardly in a position to assist given the commitment not to allow scheduled operations at night.
ND.3.7	This answer does not address the question put and it remains the case that the only evidence the ExA has on the relative cost of freight transport by bellyhold or on a dedicated freighter aircraft is set out at para. 4.7 of our February 2019 report. Although the Applicant has stated that it does not agree with this figure, it has not rebutted it with any evidence of its own. Whilst we recognise that a network airline operating freighter flights to supplement its bellyhold capacity, e.g. Emirates or Qatar Airways, may not differentiate to the shipper by how it chooses to fly the freight, this has more to do with the operation of an integrated hub and spoke model than the actual cost incurred in transporting the goods. Cost is, nonetheless relevant to the airline or aircraft operator in deciding whether it is cost effective to operate a dedicated freighter aircraft at all. The ITC report helpfully sets out at paras. 4.23 and 4.24 how sustainability in the air freight sector can best be achieved: *"Traditionally, freight has been carried in the bellies of large passenger aircraft, particularly those operating in and out of hub airports (as these offer opportunities for onward connections and therefore economies of scale). This is a highly efficient means of transporting freight, as*

	it is on-board flights that are already carrying revenue passengers and therefore the marginal cost of transporting the freight is extremely low. The use of dedicated freighters is not necessarily inefficient in itself if the loads are high for both the outbound and return legs (demand for freight can often be mono-directional), however these aircraft are usually either conversions of older passenger aircraft or the last aircraft from a given aircraft production line. This means that the rates of technology implementation for dedicated freighter airlines are among the lowest in the industry. Popular aircraft types for these airlines continue to include the McDonnell Douglas DC-10 (first flight 1970) and Airbus A300 (1974). Furthermore, dedicated freighter aircraft frequently operate at unsociable hours, due to the desire to guarantee overnight deliveries and the availability of cheap slots – this can be a primary cause of noise complaints for local residents, especially at airports without night curfews. *4.24 Sustainability for air freight is most likely to be achieved through the use of existing passenger airline hub networks supplemented by large-scale freight aggregators with dedicated aircraft fleets linking logistics hubs. This will minimise the need for extra flights, ensure economies of scale from larger aircraft, and utilise the most modern and efficient technologies available."* This report, whilst primarily dealing with the issues of environmental sustainability makes clear the circumstances where use of dedicated freighters could be viable, i.e. where there are dense flows of traffic in both direction between two points. RSP's forecasts for Manston, with inherently unbalanced inbound and outbound loads do not meet the relevant criteria. Paragraph 10 of this same report also points out the importance of night flights for freighter operations. Again, the Applicant has failed to substantiate its assertion that use of dedicated freighter aircraft is cost efficient, other than to service the integrator model, as part of an airline's hub network or in specific niche markets better able to bear the higher cost. Furthermore, there is no evidence that, other than for small volumes of specialist consignments, the industry will be willing to pay the additional cost for the purported value added services that Manston seeks to provide. The answer simply does not address the question regarding the relativity to trucking costs or where the breakeven might lie between cost and time for the majority of general air freight.
ND.3.8	In Summaries submitted by SHP following the Need and Operations Hearing, both York Aviation and Altitude Aviation Advisory have provided evidence that the new e-commerce integrators operate to similar patterns as the conventional integrators so as to achieve guaranteed delivery times. The main difference between an e-commerce integrator and a conventional integrator is that the former has internalised its supply chain with a view to minimising costs, which of itself will place pressure on an airport's ability to charge more to cover its own costs, particularly where there is a sizeable upfront capital costs. In several respects, this answer is at odds with the answer to question ND.3.4, which describes how at least some of the goods would arrive pre-labelled for direct delivery to customers. As with a conventional integrator, these goods would necessarily require night-time operations. Furthermore, to the extent that other goods are being brought into the UK to stock fulfilment centres, the time to get the goods to those centres by road will need to be factored into the time when flights need to arrive. As the ExA rightly identifies, the distance from Manston to the main centres of population inevitably mean that flights will need to arrive in the early hours so as to ensure the product reaches the fulfilment centres in time for onward distribution to customers.

	We continue to believe that EMA is likely to be the main centre for e-commerce operations in the UK as it can offer availability at night and a location convenient for many urban areas allowing product to be brought in on consolidated loads to supply fulfilment centres across the UK.
ND.3.9	York Aviation is not incorrect in relation to import/export tonnages expected in the original forecasts for integrator traffic underpinning the ES. The Applicant clearly does not understand its own Need Case. The correct information is set out in an e-mail from SHP submitted prior to the recent Hearings. If the balance of inbound and outbound tonnage by type of flight and aircraft has changed, this would have significant implications for the environmental assessment as it would fundamentally alter the time when vehicles would be on the road network, which will compound the bunching of vehicular traffic onto the road network in the morning peak as import goods arriving overnight for immediate distribution will place a burden on the road network in the morning which will not have been accounted for in the assessment.
ND.3.10	In this response, the Applicant again misrepresents what we actually said. We did not say it was either Heathrow or trucking to Europe. What we said was that, to the extent that there was a shortfall in hub airport capacity, the alternatives would be other airports in the UK or in Europe and that this could lead to an increase in trucking and associated costs. Given that this work was carried out for and in conjunction with the Freight Transport Association, it can hardly be said that it was carried out without the benefit of industry insight. Although the Applicant claims that it has taken into account the potential growth in Heathrow's global air service network within its forecasts, this is nowhere transparent as is pointed out in SHP's Summary of the Second Compulsory Acquisition Hearing. Again the Applicant asserts that the facilities that it plans to provide will give it a strategic advantage in attracting freight operators. Whilst it expresses a confidence that this will be so, there is simply no evidence that these additional services or other advantages will be sufficient to outweigh the substantial cost penalty inherent in RSP's own 'Business Model'.
ND.3.11	Here the Applicant seeks to resile from the specific carriers and types of service set out in the Azimuth Report and which have informed the assessment in the ES. If the 'forecasts' had been informed by an proper market assessment of Manston's competitive position and the likelihood of it capturing a share of the market based factors such as accessibility and cost in a top down forecasting model, then it would have been acceptable to say 'demand will be this and here is an indicative list of airlines and routes that might operate'. But that is not what Azimuth did as is made clear at para. 2.2.6 of Vol III of the Azimuth Reports, where it is stated that *As such, and also based on market knowledge and confidential discussions with airlines, airports, and organisations involved in the freight forward and integrator markets, a short and medium-term forecast was produced. The freight movements shown in the forecast relate, where possible, to particular carriers identified through the qualitative research."* These bottom up, airline by airline, short to medium term 'forecasts' were then extrapolated forward to Year 20. It is evident that the 'forecasts' upon which the whole of RSP's case is based were dependent on assumptions about specific carriers and how they would operate. As we are now told that these may not be the carriers that would operate, this invalidates the whole of the 'forecasts'. The response given is simply wrong when it says that *"the carriers identified within the ES forecasts are simply a proxy for the types and numbers of aircraft likely to be used to fly goods from Manston Airport."* Insofar as the ExA has been told that the ES forecasts are directly taken from the Azimuth Report, the 'forecasts' are entirely dependent on the assumed types and number of aircraft and the carriers as set out. If, as is now clear, the carriers, aircraft types and routes would be different, the 'bottom up' forecasts would need to be completely reworked from first principles.

ND.3.12	The answer fails to recognise that a key objective of Government in supporting the construction of a third runway at Heathrow through the Airports NPS is to increase the number and range of global air service connections offered from the UK's main hub airport. This is made clear at para. 3.18 of the Airports NPs: *Heathrow Airport is best placed to address this need by providing the biggest boost to the UK's international connectivity. Heathrow Airport is one of the world's major hub airports, serving around 180 destinations worldwide with at least a weekly service, including a diverse network of onward flights across the UK and Europe. Building on this base, expansion at Heathrow Airport will mean it will continue to attract a growing number of transfer passengers, providing the added demand to make more routes viable. In particular, this is expected to lead to more long haul flights and connections to fast-growing economies, helping to secure the UK's status as a global aviation hub, and enabling it to play a crucial role in the global economy."* It is clear that the Government expects the gaps in the route network to be filled through providing more capacity at the Heathrow hub to enable such flights to be viably provided, including delivering bellyhold freight capacity. It is far less likely that there would be sufficient cargo demand to individual currently unserved destinations to justify regular dedicated freighter operations in the foreseeable future and serving such emerging markets will depend on exploiting the power of the Heathrow hub.
ND.3.13	The graph provided by the Applicant confirms the broad trend information on fuel prices that we previously submitted in response to RSP's answers to the ExA's second written questions. What the Applicant fails to realise is that there was a threshold fuel price at which the scales tilted away from dedicated air freighters and towards trucking for shorter distances. Whilst fuel prices are volatile, they are still above the level where trucking is more cost effective than dedicated freighter operations.
ND.3.14	This response continues the unevidenced claim that new e-commerce integrators will not require to operate at night and, hence, the night movement ban at Manston will not give rise to problems for these carriers. We have presented evidence that this is not the case by reference to Amazon Air in the USA and at East Midlands. The night ban at Manston will be more onerous than the airports with which it seeks to compete, notwithstanding any tightening of constraints at Stansted over time, given the absolute prohibition of late take-offs and will act as a major deterrent to RSP's ability to attract operators, particularly those seeking flexibility.
ND.3.16	The answer from the Applicant is misleading in relation to Permitted Development Rights at airports. The response confuses those types of development that are not considered permitted development, namely extensions of a runway and major terminal extensions, with those operational developments that are considered permitted development but which require the airport to consult with the local planning authority. This latter requirement for consultation is avoided if the development *"consists of the carrying out of works, or the erection or construction of a structure or of an ancillary building, or the placing on land of equipment, and the works, structure, building, or equipment do not exceed 4 metres in height or 200 cubic metres in capacity.* (The Town and Country Planning (General Permitted Development) (England) Order 2015, Class F). Hence, the Applicant is not correct to say buildings over 4 metres in height would not be permitted development, they are, subject to the other provisions and the requirement to consult the LPA. Later in this answer, the Applicant claims that it has factored cargo growth at airports such as Doncaster Sheffield into its forecasts. This has not been transparently demonstrated in the core forecast upon which the entire case depends as produced by Azimuth.
ND.3.18	The response regarding the 'window of opportunity' fails to address the likelihood of significant delays to the time when Manston would be operational.
ND.3.19	This response asserts that Manston will offer a *"broader value for money proposition".* We have addressed the likelihood of this being so in our Submission following the Second Compulsory Acquisition Hearing.

ND.3.20	In discussing the performance of Rockford Airport in the USA, it is significant that RSP note that investors there, in this case the local government, are *"to take a long-term view financially in order to capture economic benefits locally"* and that the operations of UPS and Amazon have effectively had to be subsidised to secure these benefits given the level of competition from other airports. Surely this describes exactly the situation that Manston would find itself in but without the benefit of a local government owner willing to subsidise the operation for the long term in the light of the possible wider benefits.
ND.3.21	As pointed out in our Note on the Second Compulsory Acquisition Hearing, the NPS is clear that Heathrow's new runway is expected to deliver substantial freight benefits. The Applicant is simply wrong in its assertion that the Heathrow's third runway is the preferred location for passenger capacity only. The Applicant is also in error when it states that Heathrow had not, at the time of its January 2018 Non-Statutory Consultation, concluded that it could not accommodate the planned doubling of air freight capacity without impacting on the operation of Terminal 4. Whilst Heathrow Airport's Scheme Development Report (https://hec1.heathrowconsultation.com/) did identify closure of Terminal 4 as an option considered for accommodating freight growth, the document setting out 'Our Emerging Plans' made clear that this was not the preferred option. Section 10.3 of this document makes clear that the Terminal 4 site is not required for expansion of cargo facilities per se but, should the Terminal close for other reasons, the site might be suitable for a rail interchange to create a multimodal freight hub. This is an additional option but not a core requirement to enable the increased cargo volumes to be handled. Once again, RSP seek to misrepresent our work for TfL and the FTA. We have not changed our view on the relevance of trucking. Trucking of freight to alternative hubs with available bellyhold capacity or to the main integrator bases is a natural response to constraints biting at the UK's main air freight hub until additional capacity is provided there. This is the most economically efficient response for the operator/service provider given the relative costs of trucking, bellyhold capacity and dedicated freighter capacity. Trucking is an efficient response to any shortfall in capacity, to the extent that one exists in the much longer term following the opening of the third runway at Heathrow, albeit increasing the cost relative to securing adequate bellyhold capacity at the hub. The inefficient response would be to invest, at a substantial cost, in developing a dedicated air freight airport in a remote part of Kent requiring charges to airlines to be substantially higher than alternative better located airports to serve the UK air freight market.
ND.3.22	Again, RSP misrepresents what we have said. We have never denied that dedicated freighters may operate different routes to those operated for passengers. We set out the complexity inherent in dedicated freighter routes in our 2013 Note for TfL, upon which RSP have always sought to rely and which is appended to our November 2017 Report. However, these routes are only viable where there are dense flows of freight. The point of SHP's response was to point out the limited nature of these operations and, hence, the limited scale of the market that RSP might hope to penetrate.
OP.3.7	This response suggests that airports with based aircraft (i.e. those overnighting or returning to those airports as their home base) dedicate stands to particular aircraft such that they always park on the same dedicated stand overnight, with their own dedicated equipment. This is absolute nonsense. Whilst an airport has to ensure that it has sufficient aircraft stands to accommodate its based aircraft fleet, in our experience, across a range of busy airports, stands are seldom dedicated to a particular aircraft or even airline as this creates an inefficiency and inflexibility in stand allocation which would require more apron to be provided than is strictly necessary when there is flexible use. That is not to say that an airport would not seek to respect an airline's preference to park its aircraft in a particular area of the airport, e.g. close to its maintenance hangars or on a particular pier so as to be ready for the next morning's passengers. We have addressed the scale of apron required further in our Note on the Second Compulsory Acquisition Hearing.

OP.3.8	The Applicant is in error in its estimation of the area of freight warehouses at East Midlands Airport. We have also addressed this point further in our Note on the Second Compulsory Acquisition Hearing.
OP.3.9	Here the Applicant confirms that it expects that a new e-commerce integrator is likely to take some proportion of the goods directly off-site to landside fulfilment centres. This has implications both for the scale of facilities required, as Manston would not be a suitable location for a fulfilment centre, and for the levels of claimed on-site employment. In terms of the other facilities cited for the Northern Grass, we have addressed these in our Deadline 7 Response to the ExA's second written questions. In terms of a requirement for catering facilities on the Northern Grass, firstly this would not be 'Associated' with the Principal Development for cargo operations. In any event, given the scale of passenger operations proposed and the dominance of low cost airlines within it, it is highly unlikely that any local catering facility would be required. Such airlines centralise and standardise the provision of their on-board catering and dedicated flight catering facilities are now seldom provided at smaller airports with the required supplies being brought in from centralised providers serving more than one airport. By way of example, we are not aware of any dedicated in-flight catering supplier in the immediate vicinity of Liverpool Airport, despite that airport handling over 5 million passengers per annum. The suggestion that there would need to be a separate travel and information centre also applies to an airport a much larger scale, in terms of passenger, operations than is proposed at Manston. At the scale of operations proposed, it would simply not be viable for travel agents, tourist agencies etc to operate offices at Manston. The suggestion that vehicle maintenance for airside vehicles could be located on the Northern Grass is also misleading as such vehicles are unlikely to be taxed for use on the public highway (as to do so would increase the cost burden) and so would not be able to cross the B2050. Any such vehicle maintenance would need to be accommodated within an airside area on the airfield. In terms of airline offices, these are increasingly not required even at larger airports other than where there is a major airline based as the trend is for crew reporting and flight briefing to be undertaken at the aircraft using tablets and digital technologies. To the extent that handling agent accommodation is required, this would necessarily be terminal based.
OP.3.10	SHP have dealt, in previous submissions with the need for the PSZ to be established on a forward looking basis, not retrospectively in arrears as implied in the response.
SE.3.2	The relevance of the East Midlands Airport employment density was discussed at length at the Socio-economic Hearing and points related to this are addressed in a separate Note on that Hearing.
SE.3.4	The key point to note here is that whether the employment is directly by the airport operator or activities are outsourced is not directly relevant to the socio-economic impact of the development, which relates to the totality of on-site employment.
SE.3.5	We have addressed the estimates of MRO employment in our Note on the Socio-economic Hearing.
SE.3.7	There is no actual evidence that passengers with reduced mobility prefer small rather than larger airports. Ultimately, a passenger's choice of airport is related to the flights on offer, the cost and the surface access to the airport. The Applicant's answer is pure speculation as there are other factors which could also be material, such as the breadth of the in-terminal catering offer, retail, the availability of assistance, boarding aircraft through airbridges rather than up and down steps.

SE.3.8	As set out in our Note on the Socio-economic Hearing, the proportion of passengers staying overnight in the vicinity of the Airport is not likely to be more than 1-2%. Hence, the tourism benefits have been substantially overstated on the basis of 25% assumed overnight stays.
SE.3.10	See answer above.
TR.3.20	Our view is that the assumption that freight related truck movements will be spread throughout the day and night is inconsistent with the proposed ban on night operations. Furthermore, the description of how the proposed e-commerce integrator would operate would be consistent with goods being flown in early in the morning, off-loaded onto trucks which would then arrive onto the highway network in the morning peak period.

lc/14.6.19

APPENDIX CA.3.30

From: Niall Lawlor <[redacted]
Date: Friday, 24 May 2019 at 16:08
To: Pauline Bradley <[redacted]
Cc: Tony Freudmann <[redacted]
Subject: Offer on Manston - Subject to Contract

Dear [redacted]auline,

Having reached out to you[redacted]last Friday, and Tony touching base with Pauline, I received Pauline's email on Monday afternoon, and subsequently Pauline and I spoke on Wednesday.

My partners and I wish to place the following on record:

- Our firm view is that this offer is at a significant premium on the current real value of the land.
- We accept that the issue of Brexit, and SHPs negotiations with the DfT, cast a delaying shadow over our previous discussions. You were unable to share the terms of the Planning Services Agreement (PSA), with the DfT with us until late February, which is fully understandable, for which we accept you were not to blame. This was followed by clear uncertainty on our side, and our surprise, at the full scale and nature of the capital works undertaken on Manston, which were still in progress during the site visit as part of the ExA's inspection on 12th March. Our ability to review the extent of works undertaken was not reached until the DfT's recent statement that there would be no further activity on Manston at least until 31st October.
- SHP's efforts have made very little progress in the various attempts to alter the planning status of Manston, as evidenced by the two mixed use applications, both of which have made no progress in three years and eighteen months respectively, and the planning appeal which was refused, and in which Manston's status as an airport was confirmed. If you succeed in defeating our proposals, and if you are not able to obtain permission for housing, as we strongly believe would be the case, the land would be next to worthless.
- There is a significant risk for you of compulsory purchase powers being granted, and hence the amount we pay you being in line with the estimate of our expert valuers CBRE. 90% of our estimate would be payable upon us entering the land, and the remainder might not be paid for several years. The evidence that exists is that the last genuine open market transaction for the land was for only £1.00.

The terms of our offer, which is subject to contract, are as follows:

1. Purchase price of £12,000,000 (Twelve million pounds) to be paid to your solicitors in full on Wednesday 29th May to be held in escrow pending completion of the purchase. £5 million of the purchase price will be structured as a deposit with the balance as completion funds.

2. Exchange of contracts on Wednesday 29th May with completion to take place asap following receipt of the DFT consent to the sale, which in turn is due within 5 working days of an application being made following exchange. Our solicitors have already prepared the documents in terms that we believe will be acceptable to you as drafted. As you know we have investigated SHP's title as part of the land referencing process which is why we can proceed so swiftly.

3. We have already paid ALL the required funds into the client account of our solicitors BDB Pitmans, who will confirm said payment to your solicitors, Cripps.

4. You may retain all the rights and obligations (including the income) from the current PSA with the DfT to December 31st, 2020. In this respect we will enter into a lease with SHP to take effect upon completion thereby triggering the obligation of the DfT to consent to the sale.

5. You withdraw your (SHP's and Kent Facilities') representation and both planning applications and take no further part in the DCO (which will also save you considerable costs)

If you will confirm acceptance of this offer I will arrange for our solicitors to send you the necessary documents together with proof of funds without delay.

Best regards,

Niall Lawlor

[redacted]

Subject: FW: DCO

From: Pauline Bradley <[redacted]
Date: Friday, 31 May 20[redacted]
To: Niall Lawlor <[redacted]
Cc: Tony Freudm[redacted]
Subject: DCO

Hi Niall,

I refer to your email of 24 May 2019. Your "revised" offer of £12m has been considered by the shareholders of SHP and is unanimously rejected.

When we spoke on the telephone last week I strongly advised you not to attempt to make any changes to the terms of the offer agreed between us in January this year, following your failure to deliver on the transaction documented in the Heads of Terms signed on 3 December 2018.

I explained that my shareholders now viewed that offer as marginal - particularly given increased interest we have received in recent months. However, they have always acted in good faith and I was reasonably confident they would still honour the deal we had agreed - providing there were no more stunts and prevarications from RSP.

Predictably, that was not to be and SHP's latest attempt to acquire our land on the cheap, accompanied by thinly veiled threats surrounding how the Lands Tribunal might view the value of our site, simply smacks of desperation.

What sparse goodwill that did exist between us finally evaporated with your email of 24th May.

It simply confirmed my shareholders long-held suspicions that you were not serious in your intentions and that your engagement with us was no more than a ruse to allow you to continue to present a false narrative to the Examining Authority that RSP has made meaningful attempts to negotiate to acquire our land.

Our files are littered with correspondence from RSP that demonstrate you had no serious interest in trying to reach agreement and that RSP was seeking compulsory acquisition powers as a first, rather than a last resort.

As I advised you back in April, it is not lost on us that almost every email, text or call from you and/or Tony Freudmann seems to be timed around an impending deadline for DCO submissions or hearings. Therefore, having had sight of the Examining Authority's third written questions requiring you to substantiate your unfounded claims regarding discussions with us, we fully expected that you would make contact with us again. Having seen the lack of progress RSP has made in securing investors, we suspected that the purpose would be to muddy the waters prior to the compulsory acquisition hearing on 4 June, rather than to progress the Offer at the agreed level.

When faced with the mounting evidence before the examination and further questioning from the Examining Authority, the timing and nature of your email appears to be a blatant attempt to rile us into dismissing your offer out of hand, which you would then seek to "spin" to the Examining Authority in the hope that it overlooks your failure to meet the most basic requirements of the DCLG Guidance.

We trust the Examining Authority will see it for what it is.

Regards

Pauline

Subject: FW: Stone Hill Park Limited

From: Walton, Michael (Avison Young - UK) [redacted]
Sent: 18 March 2019 13:34
To: Smith, Colin @ London HH <[redacted]
Cc: WALKER Angus <AngusWALKER@[redacted] Tony Freudmann <tony.freudmann [redacted]
Sayer, John @ London HH <John.Saye [redacted]
Subject: RE: Stone Hill Park Limited

Dear Colin,

Thank you for your email. In the interest of being helpful I am instructed to highlight the following, some of which your client may not have made you aware of;

- Stone Hill Park Ltd acquired the land for £7m in September 2014 on an arm's length basis on account of the new parties involved and equity invested on transfer. This is shown on the Land Registry transfer documents and was reflected in the level of SDLT paid.
- The sale to Stone Hill Park followed attempts by the related predecessor to your client, RiverOak Investment Corporation LLC ("RIC"), to acquire the land from Kent Facilities Ltd earlier in 2014.
- As George Yerrall confirmed in his evidence to the Transport Committee, RIC had made an offer of £7m; "The highest offer was £7 million. We were rejected at £4 million. We were rejected at £5 million. We ultimately offered £7 million, which we were told was the asking price." (http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/transport-committee/smaller-airports/oral/17966.html)

- The subsequent sale to Stone Hill Park Ltd reflected the £7m figure your client's related predecessor was prepared to pay.
- Your client made an offer of £20 million (subject to a residential restriction) to acquire the site immediately prior to your letter of 10 October 2018. Can you please confirm whether you were aware of this at the time you sent your letter which claimed SHP's land was valued at only c£2m?

My client has also asked that I highlight the irony in it being asked to provide details of its funding arrangements at the same as your client refuses to answer the most basic questions regarding its own funding posed by the Examining Authority.

Regards
Michael

Michael Walton
Director
[redacted]
Avison Young
65 Gresham Street
London EC2V 7NQ
United Kingdom
D +44 (0[redacted]
M +44 (0[redacted]

avisonyoung.co.uk

AVISON YOUNG

BEST MANAGED COMPANIES