

For the attention of Naomi Williams

Secretary of State for Transport
Department for Transport
Transport Infrastructure Planning Unit
Great Minster House
33 Horseferry Road
London SW1P 4DR

Our Ref
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Date
8 August 2022

Dear Secretary of State

Manston Airport DCO Redetermination Delay

As you know, we act for RiverOak Strategic Partners Limited (RSP) the applicant for the Manston Airport development consent order (DCO).

Thank you for your letter of 2 August 2022. We assume it is in reply to our letter of 6 July, not 30 June as you stated in your letter. Whilst we are grateful for a reply, we are however disappointed that it contains no substantive response to the points that we raised in our letter.

As we have previously reminded you, the timetabled decision date for this application was 19 January 2020. The examination ran to schedule, and included a series of tight deadlines that the Applicant and interested parties adhered to. The Examining Authority provided its recommendation report to the Secretary of State on 18 October 2019, in line with the timetable. However, the Secretary of State's decision was delayed by six months and the DCO was only eventually made on 9 July 2020. There was a judicial review challenge to which the Secretary of State consented to judgement and this resulted in the DCO being quashed by the High Court on 15 February 2021. The DCO was, therefore, quashed some 17 months ago and the Secretary of State has completely failed to re-determine the application during this very extended period; this to be compared with three months statutory time limit for the Secretary of State to take a decision once it has received the recommendation of the Examining Authority.

Despite our frequent requests, however, not only has the Secretary of State not re-determined the application, he has not even given the parties a timescale for doing so. Your letter of 2 August 2022 simply reinforces this behaviour. Indeed, we are extremely frustrated to note that your letter of 2 August 2022 was actually the first reply to any of the five letters we have sent to the Secretary of State since the Government chose not to defend the judicial review challenge to its original decision.

Registered Office

One Bartholomew Close
London
EC1A 7BL
DX 339401 London Wall

50/60 Station Road
Cambridge
CB1 2JH
DX 339601 Cambridge 24

The Anchorage
34 Bridge Street
Reading, RG1 2LU
DX 146420 Reading 21

Grosvenor House
Grosvenor Square
Southampton, SO15 2BE
DX 38516 Southampton 3

T +44 (0)345 222 9222

Your letter states that the delay is due to the careful consideration of the 900+ representations received. We agree that the redetermination process should be carried out robustly and that there has been a large number of submissions, but do not consider the process so far to be efficient nor fair to the Applicant or interested parties. Indeed, only 13 of the submissions were received after 19 November 2021, more than eight months ago, and the majority were received over a year ago.

During consideration of the application the ExA managed to deal with thousands of submissions, conclude the examination and produce their report on time. This same standard should be upheld during the redetermination process. Furthermore, when deadlines on DCO decisions are delayed, new deadlines are set. In contrast, we have been provided with no deadline or even any indication of timeframes.

As Government made clear in 'Planning for a Sustainable Future' (2007), one of the principal objectives of the Planning Act 2008 system was to be *"timely, efficient and predictable"*. We are not aware that the Secretary of State, or indeed the Government more generally, has ever resiled from this being an important objective of the system. Indeed, we note that in the Sky television Conservative Party leadership debate held on 4 August 2022, Liz Truss said, *"We will grow the economy by getting infrastructure projects done quicker (sic)"*.

The redetermination process and the subsequent delay to the decision is no fault of RSP. Either the Secretary of State's decision letter was flawed or he should have rigorously defended the judicial review challenge. The decision by the Secretary of State to consent to judgement solely on a 'reasons' ground suggests that the Secretary of State accepted that his decision was flawed in the way that it had been drafted. If that was the case then it was, surely, important for the Secretary of State to correct his drafting of the decision letter and re-determine that application expeditiously.

The ongoing delay in re-determining this application is also completely inconsistent with current Government policy on both aviation and freight. Without wishing to set out the Secretary of State's own recent policy statements exhaustively, we draw attention to the following (all emphasis added);

Flightpath to the Future (2022)

Executive Summary (p.7): *"Aviation also has a central role in delivering local benefits across the UK. This includes championing the levelling up agenda, strengthening union connectivity, boosting economic success, and supporting local jobs. It is important to recognise the role our extensive airport, airfield and aviation infrastructure network plays in providing benefits to local communities, as well as supporting associated supply chains and the aerospace industry."*

Recover and sustainably grow the sector (p.21): *"Air freight is an excellent example of how aviation is key for the UK in supporting our global ambitions. It played a critical role during the pandemic, delivering vital PPE throughout the crisis and helping to maintain our international and lifeline distribution networks. Building on this success, the air freight sector continues to be a key enabler of international trade, playing an integral part of the future success of the UK economy. The forthcoming publication of a cross-modal Future of Freight Strategy will further explore and highlight the crucial role aviation can play in delivering the UK's freight ambitions."*

The 'Future of Freight Strategy' mentioned here has also now been published by the Secretary of State.

Future of Freight: A long term plan (2022)

Paragraph 1.5 (p.13): *“The UK freight and logistics sector is operated by private sector companies who invest in infrastructure – ports, rail terminals and airports – and equipment – trucks and rolling stock – without government support. The public sector invests in the road and rail network that is used by freight transport operators.”*

Paragraph 1.6 (p.13): *“As an island the UK is particularly reliant upon its international aviation and maritime freight connectivity and the efficient transfer of goods at ports and airports onto domestic road and rail freight modes.”*

Paragraph 1.7 (p.15): *“Air freight is an excellent example of how aviation is key for the UK in supporting our global ambitions.”*

Importantly, the Future of Freight Strategy also makes clear the urgency of meeting key priorities in relation to freight networks.

Page 8: *“Government and industry have agreed that the most urgent challenges are in five priority areas and have committed to delivering actions for a stronger future for freight in each of them.”*

These ‘urgent’ key priorities include developing a national freight network (chapter 3) and improving the planning system (chapter 5).

Paragraph 3.8 (p.38): *“Better UK infrastructure to support freight requires better consideration of freight and its supporting facilities being made at the outset of infrastructure programmes, including warehousing location, welfare, border controls and energy requirements. Ensuring that investment is made in high-quality infrastructure that benefits the whole freight system. This will require greater recognition of the importance of the freight network within public infrastructure policy and investment decisions based upon a wider awareness of freight as an integrated, multi-modal end-to-end network that is a vital component of our supply chains.”*

Paragraph 3.13 (p.40): *“Today, as the UK’s freight links to international supply chains are almost entirely privately owned or operated, the majority of investment in this infrastructure is privately led.”*

Paragraph 5.1 (p.71): *“The planning system has a crucial role in promoting development that supports the efficient supply of goods. To achieve this, the planning system needs to ensure that sufficient land is being made available in the right places for freight operations and that it is able to respond to the changing needs of the freight and logistics sector such as how to plan for the adoption of future vehicle technologies. There is a clear role for the planning system in ensuring the country has a freight and logistics sector that is economically efficient, reliable, resilient, and environmentally sustainable and can meet current and future needs.”*

Failure to re-determine the Manston Airport application some 17 months after the DCO was quashed is clearly contrary to the Secretary of State’s own policy that air freight infrastructure is both urgent and important for the national and local economy and, indeed, that the planning system should recognise this. It is clear that in not redetermining the application, after such an extended delay, the Secretary of State has failed to take proper account of his own stated policy.



The lack of re-determination has also had a harmful effect on local policy. Thanet District Council has been criticised for not having an up-to-date Local Plan and is at risk of being placed in special measures by DLUHC as a result. This is partially due to a review of the plan depending on the outcome of the Manston Airport DCO application. As well as the benefits of the project not being realised in terms of employment opportunities in an area that desperately needs levelling up, local planning policy is also being held up more generally. These knock-on effects on the local area are also quite unacceptable.

Once again, the Applicant urges the Secretary of State to re-determine the application as soon as possible and, in any event, to provide a reasonable deadline by which he will do so. This will provide all those affected by the project with some certainty, not least providing Thanet District Council with an ability to set a timetable for their updated Local Plan. Early re-determining the application will also help restore faith in the DCO regime that, as we have said above, should be operated in a manner which is *“timely, efficient and predictable”*.

Our clients reserve the right to publish this letter and any reply.

Yours sincerely



Angus Walker
Partner
For and on behalf of BDB Pitmans LLP

