

**AUTHORISATION REQUEST IN CONNECTION WITH THE PROPOSED
MANSTON AIRPORT PURSUANT TO A REQUEST DATED 1 JULY 2016
BY
THE APPLICANT**

REASONS FOR THE DECISION

In its letter dated 1 July 2016, RiverOak Investment Corporation ('the Applicant') requested authorisation under Section 53 (s53) of the Planning Act 2008 (PA2008) for access to land at Manston Airport ('the Land'), in connection with the proposed Manston Airport project.

The Land means the land and buildings identified in green on the plan included in Annex 2 of the Authorisation comprising four freehold titles, K803975, K837264, K891199, and K806190; but excluding the leasehold title numbers K716128, K803975 and K894125 shown as excluded on the plan in Annex 2. The original request also included a request for access to unregistered Occupiers land (currently occupied by Avman Engineering Ltd; Polar Helicopters Ltd; Taft International Transport; Powermain Ltd; and Hunglish Limited – the 'Occupiers') and to land within an 80m MoD safeguarding zone, relating to Secretary of State for Defence leasehold title K976945. These areas are shown in black and named in the plan at Annex 2.

In considering the request for authorisation, the Secretary of State has given consideration to the Recommendation Report prepared by the Planning Inspectorate ('the Inspectorate'), which includes a Schedule of Correspondence between the Landowner and the Applicant; and a Recommended Authorisation ('the Authorisation')(which includes four annexes – Annex 1 Terms and Definitions, Annex 2 Plan Identifying the Land, Annex 3 Schedule of Conditions and Annex 4 Schedule of Surveys. This material is the basis on which the Secretary of State has made his decision. All terms used in this Statement of Reasons are based on the terms set out in Annex 1 of the Authorisation.

In accordance with the Inspectorate's Advice Note 5: 'section 53 – Rights of Entry' ('Advice Note 5'), the applicant notified the Landowner and Occupiers in a letter dated 1 July 2016 and received in hard copy by the Inspectorate on 4 July 2016 that a section 53 authorisation request had been made to the Inspectorate. The Inspectorate requested that Landowners and Occupiers respond to the initial authorisation request by 10 August 2016 in its letter dated 20 July 2016. Neither the Applicant, nor the Inspectorate notified the MoD (or Secretary of State for Defence), since the Applicant was not seeking access to the land that was subject to the leasehold held by the Secretary of State for Defence.

The information provided by the Applicant demonstrates that the Applicant sought to agree access to the Land with the Landowner between 10 February 2016 and 1 July 2016. Subsequent to the submission of their section 53 authorisation request, the Applicant continued to engage in negotiations for voluntary land access with the Landowner. Following the

Applicant's agreement to all of the voluntary access licence terms by letter on 7 October 2016, the Applicant was refused access by the Landowner on 27 October 2016. The Secretary of State concludes that there is nothing in the correspondence to suggest that further negotiations would result in the reaching of an agreement.

The Landowner makes a number of objections to granting access, which include prematurity of the original section 53 application; challenging whether entry is sought in connection with a proposed application for a development consent order on the basis that it has not been demonstrated that the project is a Nationally Significant Infrastructure Project (NSIP) under the Planning Act 2008; whether the Applicant is considering a distinct project of real substance; and whether the Applicant genuinely requires entry onto the Land. The Secretary of State does not consider that the arguments put forward in correspondence provide grounds to refuse authorisation for entry onto the Land subject to certain conditions to protect the interests of the Landowner and Occupiers. For the reasons set out within the Recommendation Report, the Secretary of State considers that these tests have been met for the purposes of the s53 authorisation.

Entry to the Land is needed now to enable the Applicant to complete its environmental surveys. The Secretary of State considers that the scope of surveys identified in Annex 4 of the Authorisation is consistent with the scope of surveys required to prepare an Environmental Impact Assessment and Habitat Regulations Assessment to support their application for a Development Consent Order. However, the Secretary of State is not satisfied that access is genuinely required for the following surveys – Great Crested Newt and dormouse surveys, identified as 'unlikely to be required' in Annex 4 of their Application and intrusive surveys relating to land quality that are identified as 'may be needed at a later stage depending on the results of the Phase 1 study'. Consequently, these surveys are excluded from Annex 4 of the Authorisation.

Having regard to Advice Note 5 and to the Department for Communities and Local Government Guidance (The Infrastructure Planning (Fees) Regulations 2010: Guidance (June 2013), which expects applicants to "act reasonably" the Secretary of State concludes that the Applicant has acted reasonably in attempting to gain access to the Land and that the Landowners have unreasonably refused access. However, the Secretary of State is not satisfied that the Applicant has demonstrated a genuine requirement to enter the Occupiers land, nor that evidence has been provided to demonstrate reasonable efforts to agree access with the Occupiers. Consequently, whilst the definition of the Land includes unregistered Occupier's land, the conditions at Annex 3 of the Authorisation exclude access to these areas from the authorisation. This does not preclude the potential for voluntary access agreements to be made at a later date.

The Secretary of State is also not satisfied that the Applicant has a genuine need for entry into the MoD safeguarding zone, since it has already stated that it would accept an exclusion of this area from any

authorisation granted. This area is excluded by condition in Annex 3 of the Authorisation.

The Secretary of State notes that the site is subject to Operation Stack under a Special Development Order. This provides the facility for temporarily holding freight vehicles on site when required by the Department for Transport. Whilst the Secretary of State does not consider that surveyors are likely to interfere with Operation Stack, in the interests of safety, it is considered that surveyors should be excluded from site during periods of use for operation stack and a temporary suspension of the s53 authorisation has been included as a condition to the Authorisation in Annex 3.

The Secretary of State, when determining an authorisation request, must have regard to the requirements of the Human Rights Act 1998 and in particular, Article 1 of the First Protocol of the European Convention on Human Rights (ECHR), that gives a right to protection of property. Any interference with this right should be lawful and proportionate, balancing the right of individuals to peaceful enjoyment of their property against the public interest. The Secretary of State is satisfied that the authorisation is both lawful and proportionate in order to facilitate the preparation of an application for a Development Consent Order.

The Secretary of State is satisfied on the basis of the Recommendation Report, including the draft Authorisation (and annexes) that he may authorise entry onto the Land (identified in the Plan at Annex 2 of the Authorisation) subject to conditions (set out in Annex 3 of the Authorisation) under section 53(1) for the purposes of non-intrusive surveys, which includes the powers conferred under section 53(3) and section 53(3A) of the Act, and that this authorisation is justified and proportionate in the wider public interest.

Simone Wilding
Head of Major Casework Management
For and on behalf of the Secretary of State for Communities and Local Government

16 December 2016