

# Manston Airport DCO Update

September 2020



In 2018, RiverOak Strategic Partners (RSP) submitted an application for development consent to convert Manston Airport – a former military airbase that had ceased commercial airline operations in May 2014 – into a cargo hub capable of operating at least 10,000 air cargo movements per year (with add-on passenger, executive travel, and aircraft engineering services). It was the first aviation-related development consent application to be submitted under the Planning Act 2008, which legislates for large-scale infrastructure projects. In October 2019, the Planning Inspectorate’s Examining Authority (a panel of Planning Inspectors) produced a detailed report to the Secretary of State for Transport recommending refusal of the application. However, on 9 July 2020, to the dismay of local campaigners, the Development Consent Order (DCO) was given approval by the Secretary of State for Transport. The decision report published by the Secretary of State (SoS) raised serious questions about the integrity of the decision, which we discuss below. (For an overview of the DCO process, click [here](#)).

The decision date had been scheduled for 18<sup>th</sup> January this year, but the SoS (Grant Shapps) deferred the decision until May, requesting further information from the applicant on several issues including climate change. The timing of the deferral coincided with the Court of Appeal’s judgment in February that the Airports National Policy Statement was unlawful. While the ANPS was primarily developed to provide the rationale for the development of a third runway at Heathrow Airport, it also, according to the ExA, was ‘highly influential’ and relevant to other airport expansion proposals in the South East of England. Its demise left a sizeable hole in aviation-related planning policy, and it seemed as though the SoS was buying more time. By May, no new policy statement had emerged to plug that gap and, with the impacts of Covid-19 throwing aviation expansion plans into doubt, the Department for Transport had made no progress towards publishing its long-awaited Aviation Strategy White Paper. The SoS went to Parliament to defer the Manston decision for a second time until July.

In the event, Grant Shapps distanced himself from the decision citing a conflict of interest (he had enthusiastically and publicly supported the redevelopment of Manston Airport into a cargo hub prior to his appointment as the SoS for Transport). While the decision was made by the Minister for Transport, Andrew Stephenson, local campaigners are concerned that

Shapps will have exerted influence. (Please note: the decision notice must, by law, refer to the SoS; for the sake of convenience, we have followed suit).

## Details of the decision

We've focused on what we see as the four most significant aspects of the decision: considerations of the need case, the climate impacts, noise impacts and the socio-economic benefits. For the full ExA report, click [here](#). For the full decision notice, click [here](#).

### Need for the development

Central to the ExA's recommendation against development consent for Manston Airport was the question of need. The Applicant's Statement of Reasons (SoR) stressed an urgent need for a new and dedicated cargo hub in the area. Freight needs, the SoR argued, were being side-lined by passenger airports – for example, confined to the belly hold of passenger flights, restricting the times and destinations at which freight could be moved, and predominantly centred on aircraft operating out of Heathrow (the UK's main cargo hub). There was an over-reliance on trucking freight to or from airports on mainland Europe, and some freight needs were not being met at all, it argued. In view of all this, the Applicant's forecasts that it would handle 340,000 tonnes of cargo a year and 1.4million passengers per annum were unrealistic.

However, the ExA's view was that the level of freight that Manston Airport could be expected to handle was "modest". Previously, the airport had not handled more than 50,000 tonnes of cargo and 200,000 passengers a year, and its historical performance had been poor, leading to its closure in 2014. Existing levels of provision at Heathrow (even without a third runway), Stansted and East Midlands and other airports were more than adequate and could reasonably be expected to take up any slack. Manston Airport's geographical position, moreover, limited its reach to the South East offering no advantages over more centralised airports. In addition, a comprehensive and independent growth forecast indicated that the airport could not be run as a viable concern. The ExA felt that the development offered "no obvious advantages" over current provision, which was more than capable of absorbing any growth. The applicant had failed to make its case for additional or different freight needs, and the ExA gave this failure substantial weight.

The Secretary of State took a different view. While the ExA's considerations were noted, there was "a clear case of need" he found. Yet, in reaching this decision, the SoS did not challenge the ExA's carefully considered arguments. Instead, the decision notice repeated the Applicant's list of cargo-related needs before shifting abruptly to the perceived social and economic advantages a dedicated cargo hub could bring to the area. These included, the SoS argued, new jobs, education and training, leisure and tourism, benefits to general aviation, and the "potential" for the airport to blossom into a "transport asset" for the UK.

Accordingly, the case for need was given substantial weight by the SoS, turning the ExA's recommendation upside down.

### **Climate Change**

It was only through the efforts of local campaigners that climate impacts were considered at all. They realised that neither the Applicant nor the Planning Inspectorate had thought to include climate matters as a Principle Issue, and campaigners raised this glaring omission during preliminary hearing. This intervention ensured that climate change was duly added to the list of Principle Issues and, in its report, the ExA drew the conclusion that climate impacts weighed moderately against the development.

The Authority noted that the Government had amended Section 30 of the Climate Change Act (2008) to set a new net-zero greenhouse gas emissions target by 2050. In the ExA's view, the climate impacts of the development within a net-zero context had been adequately considered by the Applicant (including proposed mitigations). Its conclusion was that the construction and operation of the development "would avoid *significant* climate effects [AEF's emphasis]" in line with UK and EU planning policy.

Nevertheless, in the ExA's view, the proposed development was not on course with emerging climate change policy. While the Authority noted that S.30 of the Climate Change Act still omitted GHG emissions from international aviation and shipping (IAS) from carbon budgeting, it also noted that the Government's climate advisers, the Committee on Climate Change (CCC) had written to the Secretary of State for Transport (in September 2019) recommending that the Government legislate for their inclusion. In that [letter](#), the CCC also advised that "the planning assumption for international aviation should be to achieve net-zero emissions by 2050" – that is, as though it were included in S.30 of the Climate Change Act. This would necessitate "reducing actual emissions in the aviation sector". In a net zero context, there would presumably have to be a particularly good case for development.

With all this in mind, the ExA observed that airport's emissions would represent 1.9% of the UK's current 37.5 Mt CO<sub>2</sub> CCC's recommended target for 2050. So, while the development would avoid significant carbon emissions, it would still have a material impact on "the ability of Government to meet its carbon reduction targets, including carbon budgets". The Applicant had not demonstrated a strong enough case for to justify this.

The SoS's consideration of the ExA's conclusions was brief. It noted that the Court of Appeal judgment that the Airports National Policy Statement was unlawful, meaning that it carried no weight in the decision-making process. With the Government still considering the implications of the ANPS judgment, with no Aviation Strategy, and with the Government's Decarbonising Transport plans yet to be published, the SoS was "content" to accept the ExA's conclusion that Manston Airport's GHG emissions should be given moderate weight.

Crucially, however, the SoS reiterated that the Applicant had, in his opinion, demonstrated a strong need case for the development. Within a net-zero context, it was thus justified he considered.

Given that the Manston decision was deferred twice to allow the SoS to consider all the facts, this seems very poor. It will do little to allay the local campaigners' concerns around the integrity of the decision. Instead of considering the implications of the ANPS judgement, the SoS appears simply to have looked for a way around it while simultaneously obviating clear advice provided by the CCC.

### **Noise**

The ExA gave the noise from construction and operations moderate weight against development consent, accepting that noise issues would negatively impact local people, schools, businesses and tourism, even with operational restrictions.

The SoS broadly agreed with the ExA's conclusions, but once again felt that the socio-economic benefits which would flow from the development would outweigh any harm in respect of noise and vibration impacts. Furthermore, as adverse noise impacts would be limited by restrictions that would be put in place – including a ban on night flights between 11pm and 6am, and a restriction on noisier aircraft between 6am and 7am – the SoS gave noise and vibration impacts limited weight (without seeming to consider the impacts of the restrictions on the Applicant's business model).

### **Socio-economic benefits**

The ExA considered that any socio-economic benefits would be dependent on a strong need for the development, about which it was unconvinced. The ExA also considered that the socio-economic benefits of re-opening Manston Airport as a cargo hub were overstated. The development, the ExA concluded, would have an adverse impact on tourism in Ramsgate, a designated Heritage Action Zone with many thriving cafés and attractions that have flourished since the closure of Manston Airport in 2014. Moreover, no socio-economic benefits would be enjoyed by neighbouring Thanet and the wider area.

Extending sympathies to Ramsgate businesses (and residents), the SoS conceded that Ramsgate would suffer the greatest in terms of impacts on the local economy. However, Thanet and the East Kent area would become a tourist attraction in Ramsgate's place he argued. While the creation of jobs in Thanet and East Kent might not be as great as the Applicant claimed, significant economic benefits would still, he considered, flow that way. The SoS gave socio-economic benefits substantial weight.

It is disappointing that the SoS's conclusions around the socio-economic benefits of the development are not better explained. It is also rather surprising in view of the SoS's

arguments in favour of the need for the development, which in turn justified both noise and climate impacts. As discussed above, the SoS's arguments for the need case ignored the ExA's detailed considerations of the airport's location and the Applicant's operational forecasts. Instead, the SoS relied entirely on the anticipated socio-economic benefits that the airport would bring to justify the needs case. In doing so, the SoS raised expectations that considerations of the development's socio-economic benefits would be careful and evidenced. In the event, those expectations were frustrated.

## Where next?

According to Angus Walker of the law firm BDP Pitmans (which acted on behalf of the Applicant in this case) the Manston DCO decision:

“continues a bit of a trend of inspectors recommending refusal – five out of the last six ‘recommendation reports’ have recommended refusal, with three of them ... subsequently being granted by the Secretary of State.”

A worrying trend, perhaps. With regard to Manston Airport specifically, it is a concern that carefully researched and articulated objections around the viability of the development and the climate and noise impacts – made not just by the ExA, but by local campaigners – can be so easily pushed aside by unsubstantiated arguments supporting a case for need.

A number of questions remain:

- If the ExA was right in that the demand case is not strong, why is the developer so committed to the project? Aviation consultant Peter Forbes has argued, for example, that the real motivation has more to do with changing the status of the land for planning purposes: “RSP’s objective in promoting the Manston development is to sell some or all of the land for housing and/or industrial development.” (Click [here](#) for the article).
- Why did the SoS brush aside serious questions about the viability of the project to reach the opposite conclusion to the ExA on the need case?
- Was the SoS’s decision primarily political?

Local campaigners had worked long and hard to evidence their case against the re-development of Manston Airport as a cargo hub. Understandably, they felt crushed when the SoS overruled the ExA's careful analysis. However, as one member of a community campaign told AEF:

“Although we were devastated by the news on so many levels ... we were buoyed by the fact that campaigners clearly did make a difference to the DCO examination and

the Planning Inspectors and the ExA. We were heard, our evidence was looked at, the relationships we formed with statutory bodies made a difference. We had a win.”

Shortly after the SoS’s decision, campaigners launched a judicial review (JR) application to challenge it arguing that, according to the Government’s own experts, the development would negatively impact the local economy and both the local and wider environment, and that the needs case for it had not been made. Within just a few weeks, the [CrowdJustice funding appeal](#) (target: £100,000) has – at time of writing - raised an impressive £77,808.

Lawyers have now been instructed, the claim has been issued at the High Court, and the SoS (the Defendant) and RiverOak Strategic Partners (the Interested Party) have until 11th September to file an acknowledgement of service indicating whether they wish to contest the claim, and on what grounds if they do.