

**By Special Delivery**

Aviation Policy & Reform  
Zone 1/25  
Great Minister House  
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**For the attention of Secretary of State for Transport**

**CMS Cameron McKenna Nabarro  
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15 October 2020

**Our ref** EMDL/CHBG/MANC/163201.00041

Dear Recipient

**Objection to The Bristol Airport Limited (Land at A38 and Downside Road) Compulsory Purchase Order 2020 (the "Order")**

This **OBJECTION** is submitted on behalf of Hawthorn Leisure (Mantle) Limited of [REDACTED], the registered freehold proprietor of the following plots under HM Land Registry Title Number AV215983 (together comprising the "**Property**"):

<u>Plot(s)</u>	<u>Description and present use of Order Land</u>
3	Hardstanding between A38 highway and Airport Tavern Building, hedgerow and shrubbery within field to the north of the Airport Tavern
4	Enclosed parking area adjacent to Downside Road and hedgerow (Airport Tavern)
5&6	Field, hedgerow and shrubbery (Airport Tavern) and public footpath (LA2 37/10/X)
7	Footway (north eastern corner Downside Road)
8	Hardstanding between A38 highway and Airport Tavern building, hedgerow and shrubbery within field to the north of the Airport Tavern

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163201.00041/EMDL

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### **Statutory basis for making the Order**

Within the Statement of Reasons, the Acquiring Authority asserts that the Order was made under the provisions of the Airports Act 1986.

Section 59 of the Airports Act 1986 provides that:

*“[t]he Secretary of State may authorise any relevant airport operator to acquire land in Great Britain compulsorily for any purpose connected with the performance of the operator’s functions as such...”*

The Acquiring Authority further asserts that:

*“[t]he Highway Works are necessary for the performance by [it] of its functions in ensuring the continued, effective operation of the Airport in accordance with the Scheme to be delivered pursuant to the Application”.*

Without prejudice to our general objections to the Order we would query whether the Order has been promoted under the correct statutory powers given:

- (a) its subject matter (highway works); and
- (b) the comments we make below regarding the necessity of the highway works in connection with the operation of the airport in the current climate.

We reserve the right to make further representations regarding the statutory basis for making the Order.

### **Use to which our client's land is proposed to be put following compulsory acquisition**

The Statement of Reasons sets out that the use of our client’s land following compulsory purchase would consist of the construction of a new carriageway and a new public footway and pedestrian access to The Airport Tavern, the creation of a new junction and vehicular entrance into the Airport Tavern from Downside Road and re-grading of the parking area to accommodate the change in level between the existing parking area and Downside Road.

Our client’s objection is submitted in this context.

### **Summary of Objection**

In summary, our client **OBJECTS** to the Order on the following grounds:

- the absence of a compelling case in the public interest;
- the absence of an implementable scheme or realistic timetable for delivery;
- absence of funding / lack of financial viability;
- failure to use reasonable endeavours to negotiate by private treaty;
- the residual land left following compulsory acquisition of the Order land will be commercially unviable;
- failure to consider alternatives to compulsory purchase / the making of the Order; and
- generally, prematurity.

These grounds are discussed in more detail overleaf.

### **Absence of a compelling case in the public interest**

Department of Communities and Local Government “*Guidance on Compulsory Purchase process and the Crichton Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion*” makes it clear that a compulsory purchase order should only be made where there is a **compelling case in the public interest**, and that the purposes for which the compulsory purchase order is made justifies interference with the human rights of those with an interest in the land affected.

The Acquiring Authority’s Statement of Reasons does not disclose a compelling case in the public interest for the exercise of compulsory purchase powers against our client and its Property.

Whilst acknowledging the COVID-19 pandemic, the Acquiring Authority's Statement of Reasons is, in our view, unduly optimistic as to the speed with which passenger confidence will return to pre-COVID-19 levels.

Given the performance of the aviation sector in recent months it seems highly improbable that passenger demand will reach the existing 10 million passengers per annum (“mppa”) passenger cap next year, or that it would grow by a further 20% within the following 5 years (i.e. to 12 mppa by 2025).

If the Airport was to follow the IATA projections referred to in the Statement of Reasons it seems most likely that passenger numbers will not return to pre-COVID-19 levels (<9 mppa) until 2025, which would suggest the previously forecast growth to 12 mppa would not be achieved until the early 2030s. The compulsory acquisition of land now to facilitate passenger numbers that may not be achieved for more than ten years appears to fall far short of demonstrating a compelling case in the public interest to acquire the Property at this stage.

It is also instructive that other airport operators, including Heathrow Airport Limited, have scaled back their expansion plans in the current climate.

### **Absence of an implementable scheme or realistic timetable for its delivery**

The Order is said to be required to support the Acquiring Authority’s planned increase in the permitted passenger cap at the Airport from 10 to 12 mppa, which is the subject of an appeal against the refusal of planning application reference 18/P/5118/OUT.

At the present time, therefore, the Acquiring Authority does not currently have an implementable planning permission which would necessitate or justify the use of compulsory purchase powers.

Given the impact of COVID-19 noted above, it would appear to be likely that many of the assumptions upon which planning application 18/P/5118/OUT was predicated will need to be reviewed and potentially reassessed. The information currently available to justify the Order is not sufficient to show that the Order would deliver an implementable scheme neither does it show when the works will be carried out.

Our client is further concerned that if the Order is confirmed now the Property may not be acquired immediately and will be blighted until a decision is made to implement the Order (potentially up to 5 years from now).

On this basis the making of the Order is premature at this stage.

### **Absence of funding / lack of financial viability**

The Acquiring Authority's Statement of Reasons is scant on detail regarding the funding of the scheme that justifies the Order. As at the date of the Statement of Reasons, the Acquiring Authority has only committed funds to proceed with the acquisition of land for highway works. There is no information regarding the funding of the highway works themselves or for the remaining infrastructure works now being promoted.

No evidence is provided of the market appetite to fund airport related infrastructure at the present time. Neither is there any evidence of the return on investment that might be achieved by an investor in airport infrastructure given the significant uncertainty regarding future passenger numbers and growth. As already noted, it is instructive that other airport operators, including Heathrow Airport Limited, have scaled back their expansion plans in the current climate.

The net assets of the Ontario Teachers' Pension Plan, whilst impressive in themselves, do not demonstrate that funds have been secured for and allocated to the infrastructure works at Bristol Airport or why the pension fund would regard a commitment to such works at this stage as being likely to deliver an acceptable return to their investors and pensioners.

#### **Failure to negotiate**

The Acquiring Authority professes to have sought to negotiate the acquisition of the Property by private treaty. However, the evidence of such negotiations in paragraph 8 of the Statement of Reasons is extremely weak.

No evidence has been provided of the nature of the correspondence, the steps taken to establish whether the parties contacted were authorised to represent our client, the terms offered, or the response received.

Paragraph 8 merely confirms that the Acquiring Authority, and its agents CBRE, “*have been in contact with all parties from whom permanent acquisition is required*”, which might just mean that all landowners have been sent a copy of the Order. The evidence of attempts to negotiate with our client is woefully inadequate.

Against this background it is difficult to understand how the Acquiring Authority's Board members asked to authorise the making of the Order could have reasonably concluded that adequate efforts had been made by the Acquiring Authority to negotiate a private treaty acquisition on the basis of the evidence now provided.

Given the failure to take reasonable steps to negotiate with our client the making of the Order is not justified and is premature at this stage.

#### **Residual land left following compulsory acquisition of Order land will be commercially unviable**

The Order proposes to compulsorily acquire the frontage on two sides of the Property. The Property is in a key location and in the absence of compulsory acquisition would have had significant re-development potential. The land that would be acquired pursuant to the Order would make the remaining land less commercially viable, both in its current use and in relation to its development potential.

#### **Failure to consider alternatives to compulsory purchase / the making of the Order**

The Acquiring Authority asserts that the purpose for which the Order is sought cannot be achieved by any other means in a realistic timescale without the Order being confirmed. However, there is no objective assessment of the alternatives considered to justify this conclusion.

Paragraph 7.7 of the Statement of Reasons states:

*“Since [the Acquiring Authority] is not authorised to acquire new rights over land to use as construction areas for the off-airport highway works, and nor is it able to take temporary possession powers over such land, it must acquire the Order Land permanently, even on plots where the [Acquiring Authority] does not propose to undertake permanent highway works”.* This includes plots 4 and 6.

The Acquiring Authority therefore appears to accept that it is unnecessary to permanently acquire the entirety of the Property comprised in the Order but because of the statutory power selected is required to acquire a greater interest than it needs.

In common with many aspects of the scheme the use of the Order is misconceived.

### **Prematurity**

Overall, the Order is premature.

There is no compelling case in the public interest to acquire the Property, in particular:

- There is considerable uncertainty that passenger numbers will ever reach the numbers projected when the underlying scheme was first conceived prior to the submission of the planning application in 2018 and that the ongoing COVID-19 pandemic should lead to the previous justification for the Order being carefully re-considered;
- There is no detailed scheme with planning permission that justifies the compulsory acquisition of all or any of the Property;
- The Acquiring Authority has failed to take reasonable steps to assemble the land required for the highway works by private treaty;
- There must be considerable doubt that investment in airport related infrastructure is financially viable in the current climate; and
- The Acquiring Authority has failed to consider alternatives to the use of compulsory purchase powers.

### **Conclusion**

For the reasons given above our client considers that the making of the Order is misconceived and / or premature and that it should not be confirmed by the Secretary of State at this time.

Our client reserves the right to expand on these grounds of objection upon receipt of further information from the Acquiring Authority including, but not limited to, its detailed Statement of Case.

Please acknowledge safe receipt of this letter which, for the avoidance of doubt, is written without prejudice to any further submissions that may be made by or on behalf of our client in the future.

Yours faithfully

[Redacted signature block]

**CMS Cameron McKenna Nabarro Olswang LLP**

Copy to: Henry Church – CBRE ([Redacted])