

Officer comments on LAA 'Initial Response to Council Report A/09/5'
Without Prejudice

Referring to paragraph numbers in the LAA initial response:

1.3.a - Reference should be made to 'uncertainty about some of the effects'

1.3.c - And 'the proposals are likely to result in significant adverse effects'

There is a reason for refusal e) relating to sustainability.

1.4.a - Please note we have received comments from Kent Highways about paras 7.35, 7.62 (and Kent Highways comments in Appendix 3), and particularly the last sentence of para 9.7 (and therefore recommendation 3. f) of the council report. That is the trigger for the works to Hammonds Corner has been agreed with LAA at 30,000ppa not 300,000ppa as quoted in the report. We note your agreement for the trigger to be 50,000ppa in LAAs proposed conditions. As such any reason for refusal associated with works to Hammonds Corner should include the runway application even though it is argued the existing infrastructure of the airport allows for 300,000ppa. Please comment on this.

1.7 - There has been considerable dialogue over a period of nearly 3 years, including the use of BV to try and resolve technical differences between LAAs consultants and statutory consultees. At present officers see no point in independent third party mediation.

1.18 - Para 7.30 of the council report refers to Natural England's geomorphology objection, which they consider as being significant in its own right. As such LAA should take this as one of a number of reasons taken together for the council report concluding there will be a significant adverse effect on the SSSI. We have asked Natural England to review or confirm this point and may take further legal advice on this once we have reviewed all the other points associated with the SSSI. BV was not asked to review the geomorphology assessment as it arrived late. In any event Natural England confirmed the information was now adequate to comment on geomorphology.

1.19 – Invertebrates, plants and birds are issues in the SSSI and various information was submitted in August 2008 and March 2009 which required consultation and appraisal.

1.22 - BVs advice and officer comments are not considered contradictory. BV has advised on the likely impacts and information associated with the pSPA and pRamsar. Although there is presently no legal protection under the Habitat Regulations officers consider the issues are a material planning consideration. Natural England is of the same view. This is fully explained in paras 7.37-7.43 (and 5.21) of the council report. Following forthcoming

discussions and any further correspondence it may be that officers will take further legal advice on this point.

1.23 – 1.24.

We feel we have adequately covered noise issues in paras 7.44 - 60 and 9.8 of the council report and do not feel various comments are contradictory. Overall we consider there will be a low - moderately significant adverse effect, and by LAAs own admission there will be a moderate adverse impact to some properties in the local community. The ES states where impacts cannot be mitigated 'increases in airborne noise levels only exceed the recognised CAA criterion for the onset of significant community annoyance at 66 properties based on the annual average'. The Environmental Health Officer in Appendix 6, pages 145-148 of the council report, gives further details of properties and areas affected.

Para 7.48 - 7.49 on page 38 of the council report states that when comparing the existing baseline with the future baseline and future with consent scenarios a significant increase in noise will occur and when weighing up the merits of the proposal there is an adverse noise impact. This is based on discussions with BV. In para 7.58 – 7.59, as part of BV's conclusions, it states that whilst there will be an overall minor adverse noise impact, there will be a material worsening in the acoustic environment which will really be noticed by some people living close to the airport and also Greatstone Primary School, which should be taken as an adverse consequence and set alongside other adverse effects and benefits. Please also note the comments in para 7.46 of the council report.

We make it clear in para 9.8 of the council report that whilst it would not be recommended the applications be refused on noise grounds alone, this could be a reason for refusal alongside others if the benefits of the proposals do not outweigh the adverse effects when taken together. This takes account of comments from BV and the Environmental Health Officer.

SD1 (k) relates to safeguarding and enhancing the amenity of residents, (c) protecting and enhancing the Kent Downs AONB and (d) protecting and enhancing designated or proposed sites of international and national importance. These issues are covered at various parts of paras 7.46 -7.60 of the council report and considered by the Environmental Health Officer in Appendix 6. .

1.28 - Officers do not consider there has been a lack of engagement, but might take further legal advice on the recommendations and reasons for refusal following the current and final round of discussions and correspondence.

1.30 - See 1.7 above.

2.4.a - Disagree, please clarify

2.4.b - Disagree, but BV and LAAs consultants to comment and discuss further with officers.

2.4.c – Disagree. Officers have considered LAAs arguments, BVs advice and comments of Natural England and others. The key ecological and other issues are highlighted in the council report, including associated conclusions and recommendations.

2.4.d - Noted, but it is not considered necessary to go through in even more detail the history of the applications. The report is already very long and quite detailed. As well as in paras 4.17-4.19 of the council report other references to further information and revisions are made throughout the report where appropriate.

3.2 - Similar to 2.4.d

3.4 - Most of the issues identified in the table are potentially resolved subject to conditions (notwithstanding some statutory objections). Geomorphology, Hammonds Corner, Noise and Nitrogen Deposition are still not resolved/objections removed.

3.5.c - And the likely adverse effects on the pSPA and pRamsar based on advice from BV.

3.5.d – Need to add ‘and other limited adverse effects in the wider area’.

There are additional topics regarding Hammonds Corner (Protected Species) and Sustainability.

4.3 – 4.4. Various tables. Like elsewhere on ecology BV will be providing most of the comments, but some points are made here mainly in relation to the Officer Report column:

- No reference made to ‘clear and graded area’. SAC effects also need to be taken together.

- SPA effects also need to be taken together. Add uncertainty about some of the effects.

- SSSI effects also need to be taken together. See earlier comments about geomorphology and ‘clear and graded strip’. Report also cites lack of clarity with regard to mitigation and studies (e.g. additional habitat creation, distribution of terrestrial invertebrates). BV to cover medicinal leeches.

- pSPA and pRamsar. See 1.22 above.

- Hammonds Corner. BV is reviewing this and will be subject to discussion at the forthcoming meeting. See also 1.4a.

Following discussions, and any further correspondence, the weight given to each and all of the effects on the designations (including the pSPA, pRamsar and Protected Species) may need to be reviewed in the context of further legal advice.

4.5. Noise. See 1.23 – 1.24 above. BVs ES review June 2009 mainly concerns the adequacy of the information submitted under the EIA Regulations and recommended various clarifications. BV produced a separate noise briefing note (19 June 2009) and officers discussed various points with BV and the Environmental Health Officer before concluding the council report.

6.1. It is accepted that the total number of parking spaces is 639, not 637. However, it should be noted 637 was the total number given by Indigo Planning when clarification was sought on this point following receipt and validation of the planning application. On a similar note please see para's 4.2-4.4 of the council report. I assume the 468 on line three should be amended to 691 (510 + 181)? Subject to any further comment this will be clarified in a supplementary report.

6.3 - 6.6. Habitats Regulations and Precautionary Principle. Subject to comments from BV and Natural England, and any further comment from LAA, the council might take further legal advice on this and related points before completing a supplementary report. In the meantime LAA comments are noted about the 'adverse' and 'significant' tests. Also the contention that Natural England has provided the wrong advice in relation to the application of the precautionary principle 'as a matter of law,' and that officers have 'over applied' this test.

6.7. Following forthcoming discussions and comments received we will consider to what extent the supplementary report needs to address the role of Natural England and specific points where officers agree or disagree. The report is currently written to highlight where we feel Natural England's comments are relevant to the appraisal, likewise BVs work and comments of the applicant and others, with our conclusions and recommendations at the end.

6.8. We have considered all consultation responses, having set them out in near full detail in the appendices, summarised them in approximately eleven pages of the council report, and referred to them directly when considered relevant to the officer's appraisal section. We believe we have provided a balanced appraisal of the socio-economic issues based on the comments received and our own views.

6.9. I understand Natural England will be commenting further on this point.

6.10-6.16. As in 6.8 we believe we have provided a balanced appraisal of the socio-economic issues based on the comments received and our own views. However, we will consider making the point in a supplementary report, made by the SDC Economic Development Officer, about trips and perceptions of reduced tranquillity. Your comment 6.15 might be included in the

supplementary report as a supplement to para's 7.50 – 7.51 and elsewhere, possibly subject to further legal advice.

7. Conditions and heads of terms for a S106. We have considered various mitigation measures in the report and BV have also considered them as appropriate in the AA. It is not always possible to analyse in the report every detail of the LAAs proposed conditions and S106, like other aspects of the application and various comments received. However we will consider this matter further with BV and it should be a point for discussion at the forthcoming meeting.

8. Conclusions. These are covered above and are intended to be further dealt with by BV and Natural England as appropriate.

Terence Ellames
October 2009.