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9 April 2009

Dear Mr Ellames,

Application Numbers: Y06/1647/SH and Y06/1648/SH

Location: London Ashford Airport, Lydd

Supplementary information including overview of Applications and supporting materials

Thank you for consulting the RSPB on the supplementary information supplied by London Ashford (Lydd) Airport (**the Applicant**) to construct a new terminal building and car parking area and a 444m runway extension (**the Applications**).

The RSPB lodged objections to the Applications, due to their environmental impact, in our representation to you dated 5 March 2007. These objections were maintained in our letters dated 15 November 2007 and 1 October 2008, in response to two rounds of supplementary information supplied by the Applicant.

In response to recent requests for additional information from Shepway District Council (SDC), the Applicant submitted supplementary information in reports dated March 2009 (SI 2009). These new reports do not include sufficient information to address any of our previous concerns regarding the Application; therefore, the RSPB wishes to **maintain its objection**.

This letter relates only to the information in SI 2009, Volume 1 (Overview of Applications and

Supporting Materials). Our concerns are summarised below and detailed in annex 1 and annex 2 of this letter.

Section 5 of Volume 1 summarises a number of key material considerations relevant to determining the Application. The RSPB has serious concerns relating to some of these summaries, including:

- **Bird strike risk:** Paragraph 5.102 states that the management of bird strike will not have an adverse effect on the integrity of the Dungeness to Pett Level Special Protection Area (**the SPA**). However, the Applicant's Bird Control Plan (**BCP**) remains in draft format, and therefore concerns over the efficacy of the BCP and its impacts on the SPA have not been addressed. To approve the Applications, the competent authority needs to have certainty that there will not be an adverse effect on the integrity of the SPA, using the best environmental information available. The RSPB considers that the Applications leave uncertainty as to the bird strike risk and to the measures that will be required by the BCP to control this risk. Therefore, the RSPB's view is that the Applicant has not shown that the BCP will not have an adverse effect on the SPA.
- **Noise:** Paragraph 5.103 acknowledges that increased aircraft noise would impact on birds in and around the SPA. The RSPB is concerned that as the Applicant has not produced a noise management plan (as is their intention), there is no certainty that measures to mitigate noise impacts will be effective or enforceable. For the competent authority to conclude no adverse effect on the SPA, it must be certain that any measures proposed to mitigate the impacts of noise increases will be effective.
- **Nitrogen deposition:** The RSPB believes that the Applicant has failed to demonstrate, beyond reasonable scientific doubt, that there will not be an adverse effect on the integrity of the Dungeness Special Area of Conservation (**the SAC**) due to nitrogen deposition. SDC should take account of a report commissioned by the RSPB and Kent Wildlife Trust¹, which highlights several concerns regarding information supplied by the Applicant.
- **Sewerage (solid waste management):** The options proposed to upgrade the drainage system at London Ashford Airport (**LAA**) include the installation of cesspools. There is insufficient information provided to ascertain whether the cesspools could have an adverse effect on the SPA/SAC. Upgrading the sewage treatment at LAA is an integral part of the development proposals and the potential impacts of the options should be fully assessed in the Appropriate Assessment (AA). Leaving the choice of upgrade until after planning permission is granted is unacceptable.
- **Landscape and visual amenity:** The summary has failed to recognise and take into account the impact of increased aircraft traffic on the amenity value of the RSPB Dungeness Reserve and the surrounding area.
- **Key planning policy:** The RSPB considers that the Applications, due to their environmental impacts, are in conflict with The Kent and Medway Structure Plan (2006), the Shepway District Local Plan (2006) and the draft South East Plan.
- **Climate change and carbon capture measures:** The Applicant is relying on the Government to address the impacts of the Applications on climate change. However, we do not believe that that

¹ Cresswell Associates (2008) Assessment of the air pollution impacts from an expanded Lydd Airport. Commissioned by the RSPB and Kent Wildlife Trust

Government's commitment of an 80% reduction in emissions by 2050 can be met if aviation emissions are not constrained.

Section 6 of Volume 1 presents a revised schedule of mitigation measures. The RSPB does not feel that proposed mitigation measures are sufficient to ensure no adverse effect on the integrity of the SPA or SAC. In addition, we have concerns over the lack of clarity in this section since it is unclear (from the content and headings of the table) what each mitigation measure is being proposed for.

In conclusion, it is the RSPB's opinion that, based on the ecological information provided by the Applicant, it cannot be ascertained that there will not be an adverse effect on the integrity of the SPA or SAC. The RSPB considers that the Applicant has failed to provide the necessary information required for the AA, and therefore any decision to approve the Applications at this stage would not be in accordance with the Conservation (Natural Habitats &c.) Regulations 1994 (as amended) (the Habitats Regulations). As it cannot be ascertained that there will not be an adverse effect, the further tests in Regulations 49 and 53 of the Habitats Regulations (no less damaging alternative solutions, imperative reasons of overriding public interest, and the provision of compensation) must be met before the Applications can be consented.

The RSPB and Natural England raised concerns over SDC's draft AA Report in December 2007. We understand that the AA report is now being redrafted. Since the original draft, new information on the ecological impacts supplied by the Applicant (Supplementary Environmental Information, 2008) and stakeholders (Assessment of the air pollution impacts from an expanded Lydd Airport, 2008) has been submitted to SDC. Given our serious concerns over the original draft, and that new information is being assessed, we would strongly recommend that Natural England be consulted on the redrafted AA Report.

We would be grateful if SDC could keep us informed on the progress of this Application. In addition, the RSPB would welcome the opportunity to comment and offer advice on the content of the AA.

Yours sincerely



Fay Martin
Conservation Officer

Annex 1 Detailed comments on Volume 1, Section 5 of Supplementary Information (2009)

Key Material Considerations in Determining Applications

The RSPB has the following detailed concerns regarding the information presented in Volume 1, Section 5 of the supplementary information provided by the Applicant. For ease of reference, we set out these concerns below in the order as set out in Volume 1, Section 5:

Planning Policy

Paragraph 5.17 states that the *'Applications are, subject to relevant environmental considerations, supported by the Government's Aviation White Paper and in the relevant policies contained in the Kent and Medway Structure Plan 2006 and the Shepway District Local Plan Review 2006.'*

The Kent and Medway Structure Plan (2006) and Shepway District Local Plan (2006) include policies supporting expansion at LAA, **provided that there would be no significant impact upon internationally important wildlife communities in the Lydd/Dungeness area.** The RSPB's view is that the Applicant, for the reasons given below, has not demonstrated that there will be no significant impact on these interests. Therefore, the Applications do not comply with these policies.

In addition, the South East Plan (due to be adopted in 2009) does not include a policy for expansion at Lydd Airport, but it does advocate wetland creation in the Romney Marsh area (Policy NRM5 – Conservation and Improvement of Biodiversity). Wetland creation on Romney Marsh is likely to increase the number of waterfowl crossing the airport and/or its immediate airspace. However, the Applicant's draft BCP includes a section on the local Safeguarding Policy, including a 13 km safeguarding zone that will cover Romney Marsh and the area of strategic opportunity for wetland creation envisaged in Policy NRM5. Therefore, consenting the Applications is likely to result in a conflict with the South East Plan and the airport's safeguarding policy of guarding against new or increased bird strike hazards (since any wetland creation is likely to lead to increased bird strike risk).

Landscape and visual amenity

Paragraphs 5.45-5.49 have not addressed the visual impact of increased aircraft traffic on the RSPB Dungeness Reserve (**the Reserve**). In addition, the frequency of peak noise events is likely to erode the tranquil nature of the Reserve and surrounding area. The RSPB is concerned that this will damage the visitor and educational experience and result in a decline in numbers from the usual annual figures of 29,000 visitors and 1,000 students.

Climate change and carbon management measures

Paragraph 5.6.3 states that *'Greenhouse gas emissions would be dealt with under wider Government and EU requirements and initiatives such as the EU's Emissions Trading Schemes and the Civil Aviation Act 2006, although the airport operators would seek to engender and influence carbon awareness in any fleet based at the airport.'*

RSPB remains concerned about the impacts of airport expansion on both a global and local scale.

Expansion of Lydd Airport would be accompanied by a significant increase in CO₂ emissions contributing to climate change, which presents a significant threat to local, national and international biodiversity. For example, climate change is resulting in sea-level rise, which threatens Dungeness and Romney Marsh's nature conservation (and economic) interests. This increase would contradict national, regional and local policies on climate change and sustainable development.

The RSPB is concerned that the Applicant is relying on the Government to address the impact of aviation on climate change. We recognise the Government's pledge to restore emissions to 2005 levels by 2050, but do not believe that they are in a position to deliver on this yet. The 80% emissions reduction target set out in the Climate Change Act (2008) reflects the urgency and scale of the task to reduce greenhouse gas emissions. The Climate Change Committee has issued advice to Government, stating that aviation emissions should be taken into account in the UK's strategy for meeting its long-term climate change goal (an 80% reduction in emissions by 2050)². It is clear from their and others' analyses that it will be almost impossible to achieve this goal if aviation emissions are not constrained. Therefore, the RSPB considers that the Council should also refuse permission to expand Lydd airport on climate change grounds.

Nitrogen Deposition

Paragraph 5.82 concludes that '*the expansion would only have a negligible impact on nitrogen deposition levels within the SSSI [Dungeness, Romney Marsh and Rye Bay Site of Special Scientific Interest]*'. However, the findings of a report commissioned by the RSPB and Kent Wildlife Trust, submitted to SDC on 31 October 2008, contradict this. An extract from the report summary is shown here:

The proposals indicate that, based on the latest information from the developers (August 2008), the rates of nitrogen deposition over part of the SAC near the airport are likely to exceed 10 kgN.Ha⁻¹.Y⁻¹ with expansion of the Airport to 300,000 ppa. The predicted future rates of nitrogen deposition, including all background sources as well as that predicted as emanating from the proposed Airport Expansion, come within the range of the Critical Load (10-20 kgN.Ha⁻¹.Y⁻¹) proposed by APIS. However, as suggested above, these Critical Loads are not reliable, for the following reasons.

- 1. They are probably set too high, and loads of less than 10 kgN.Ha⁻¹.Y⁻¹ should be used to ensure negligible effects on lichens in the long term.*
- 2. They do not consider long term direct effects because research projects have not yet been conducted to determine these.*
- 3. They do not consider longer term cumulative and indirect effects, such as eutrophication and the gradual encouragement of higher plants, which would gradually out-compete important lichen and other low-nutrient tolerant communities.*

*If the proposed expansion were to proceed, the areas that would experience elevated nitrogen loads exceeding that which the literature suggests would have negligible long term effect will include those where these species and communities occur (including the lichen *Rinodina aspersa* and the *Sheeps-fescue**

² Committee on Climate Change (2008) *Building a low-carbon economy – the UK's contribution to tackling climate change*

community containing Cladonia lichens). Some species have already become extinct in Dungeness, probably from air pollution in the past, and pollution remains a threat to the survival of the Dungeness ecosystem.

Given the status of the Dungeness SAC as a Natura 2000 site protected under European policy and UK legislation, the developers are required to demonstrate 'beyond reasonable scientific doubt' that the proposed development would not have an adverse effect on the integrity of the site. Given the uncertainty in the empirical evidence regarding the impacts of pollution on sensitive plant and invertebrate communities (such as those for which the SAC has been designated), the assumption that air pollution as a result of the proposals (in particular the increases in nitrogen deposition) will not have a significant effect is clearly not one that can reliably be made.

Birdstrike Risk

Paragraph 5.102 states: *'It is expected that the requirements of the airport to mitigate the birdstrike hazard would have no overall negative effect on bird populations in the wider area or on the species for which the SPA is (and any revisions of the SPA will be) designated and therefore no adverse effects on the integrity of the SPA, other designations or bird reserves would occur.'*

Since no further information has been provided by the Applicant, the RSPB still considers this conclusion to be flawed. The BCP remains in draft format and our previously raised concerns regarding the efficacy of the BCP, and its impacts on the SPA, have not been addressed. These are summarised here:

- The Bird Hazard Risk Assessment (Supplementary Environmental Information, 2008) (**BHRA**) identifies swans, geese, game birds, herring gull and mallard as particularly high bird strike risk, for which specific procedures will be required to minimise the threat. The BHRA states that waterbirds cannot be dealt with – aircraft will have to be grounded whilst these birds fly over. The RSPB questions the feasibility of this measure (e.g. we question whether such a measure will prove acceptable to the operation of the expanded, commercial airport). We are therefore extremely concerned that the airport will have to resort to an increase in bird scaring, to provide a larger buffer around the airfield and thus reduce bird strike risk. Increased bird scaring activities will result in greater impacts on the SPA than predicted.
- The BHRA considers the current game bird rearing and shooting nearby is incompatible with the growth of the airport. However, this hazard cannot be reduced without agreement from adjacent landowners, which does not appear to have been sought. Whilst not a nature conservation issue, the RSPB is concerned that this demonstrates the flawed (e.g. ineffective or unenforceable) nature of the BCP, and also a lack of commitment from the Applicant to deal with the threat to aircraft safety.
- Whilst a BHRA has been provided, the RSPB remains concerned that the lack of information on bird flightlines and lack of understanding of gull movements means that the bird strike risk may have been underestimated. The RSPB therefore considers the BHRA cannot be relied upon to provide an accurate assessment. Expert advice provided to the RSPB by Wildwings Bird Management, and presented to SDC in our response dated 15 November 2007, stated that Lydd represents an extremely hazardous site in terms of what we know at present, and that further hazards are likely to be identified by studies of migratory and nocturnal movements of birds.

- The BCP includes bird scaring to produce a 300m wide buffer round the airport boundary. The focus of this buffer is on priority bird strike species, but bird scaring will also affect non-target species. Noise contour work by the Applicant (Supplementary Environmental Information, 2008) shows that noise disturbance will affect the SPA beyond the 300m buffer. Furthermore, the BCP includes bird scaring to disperse acute hazards off airfield, which may also affect the SPA, however, there is no information supplied to assess the impact of this.
- The Applicant stated that the BCP is presented as a draft document for discussion and iteration, and that the bird control measures would need to be adjusted and refined as required to control risks to both aircraft safety and wildlife habitat disturbance (paragraph 1 of the BCP). This approach is not acceptable under the Habitats Regulations as at the time of determination of the Applications, the competent authority needs to have certainty that there will not be an adverse effect on the integrity of the SPA, using the best environmental information available. The RSPB considers that the Applications leave uncertainty as to the bird strike risk and to the measures that will be required by the BCP to control this risk. Therefore, the RSPB's view is that the Applicant has not shown that the BCP will not have an adverse effect on the SPA.

Noise

The Applicant states that *'Increased aircraft noise would impact to some extent on bird reserves in and around the SPA'* (paragraph 5.103)/ The RSPB is concerned that although the Applicants intend to, they have so far not produced a noise management plan. There is therefore no certainty that measures to mitigate noise impacts (such as noise performance standards and regular review of departure procedures and routes) will be effective or enforceable. For the competent authority to conclude no adverse effect on the SPA, it must be certain that any measures proposed to mitigate the impacts of noise increases will be effective. However, the RSPB considers that, since no information is available to assess the effectiveness of such mitigation measures, it cannot be certain that noise increases from aircraft movements will not have an adverse effect on the integrity of the SPA.

Sewerage (Solid Waste Management)

Paragraph 5.111 explains that plans to upgrade the drainage system at LAA include two options: pumping foul water to a Southern Water sewer, and establishing cesspools. These options are discussed in SI 2009, Volume 5, Appendix 6. There is insufficient information provided to ascertain whether the cesspools could have an adverse effect on the SPA/SAC. Therefore, the proposal (as suggested in SI 2009, Volume 5, Appendix 6, paragraph 4.0) to leave the choice of type of upgrading until after permission is granted is unacceptable. Upgrading the sewage treatment at LAA is an integral part of the development proposals and the potential impacts of the options should be fully assessed in the Appropriate Assessment.

Annex 2 Detailed comments on Volume 1, Section 6 of Supplementary Information (2009)

Mitigation Measures

The RSPB does not feel that proposed mitigation measures are sufficient to ensure no adverse effect on the integrity of the SPA or SAC. In addition, we have concerns over the lack of clarity in this section since it is unclear (from the content and headings of the table) what each mitigation measure is being proposed for. Our concerns cover the following:

Area: Ecology

Aspect: Biodiversity Action Plan

Mitigation: A habitat and biodiversity action plan will be developed and will include (amongst others) methods to ensure a balance is met between recognising the importance of wetland habitat for bird conservation and the need to minimise bird strike hazard.

RSPB concerns:

- We would like clarity and additional detail on what the biodiversity action plan is mitigating for.
- It is not clear how two conflicting needs (recognising the importance of wetland habitat for bird conservation and minimising bird strike hazard) will be reconciled. Further detail and clarity is needed.

Area: Bird Conservation and Hazard Management

Aspect: Bird Hazard

Mitigation: The Applicant will continue to develop and implement a BCP, which will be in line with the outline BCP submitted with the 2008 Supplementary Information.

RSPB concerns:

- It is not clear what the BCP is mitigating for, since it is under the heading of both Bird Conservation and Hazard Management
- Since the BCP is in draft format, there remains uncertainty over whether it would affect the integrity of the SPA (please also refer to annex 1).

Area: Air

Aspect: Air Quality Management

Mitigation: The Applicant will develop an air quality strategy together with an air quality monitoring strategy

RSPB concerns:

- It is not clear what the air quality strategy is mitigating for.
- If this measure is proposed as mitigation for the impacts of nitrogen deposition on the SAC, then further detail is required to give certainty that the air quality strategy will be effective and enforceable. This is a necessary requirement for the competent authority to conclude no adverse effect on the SAC (please also refer to annex 1).

Area: Noise and Vibration

Aspect: Noise Management

Mitigation: The Applicant will develop a noise management plan, which will include measures such as controlling ground noise; establishing noise performance standards for aircraft based at LAA; and managing flight path, departure, arrival and taxiing procedures.

RSPB concerns

- It is not clear what the noise management plan is mitigating for.
- Without detail on the content of the noise management plan, then its effectiveness cannot be assessed.
- If these measures are proposed as mitigation for noise impacts on birds, then the RSPB is concerned that there is no certainty they will be possible, effective or enforceable. This is a necessary requirement for the competent authority to conclude no adverse effect on the SPA (please also refer to annex 1).

Area: Solid Waste Management

Aspect: Sewerage

Mitigation: At 300,000ppa the applicant will investigate the options to deal with foul water disposal for the additional 200,000ppa and the suitable option to be agreed with the local planning authority.

RSPB concerns

- As the upgrading of sewage treatment at LAA is an integral part of the development proposals, and may have a significant effect on the European Sites, it is not acceptable to leave the choice of type of upgrading until after permission is granted. The Applicant must provide information to SDC on the full implications of the upgrade options, so any potential impacts on the designated sites can be assessed in the Appropriate Assessment (please also refer to annex 1).