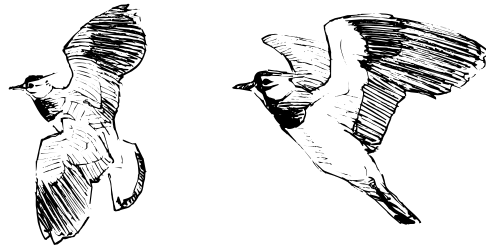




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Terry Ellames  
Shepway District Council  
Civic Centre  
Castle Hill Avenue  
Folkestone  
Kent CT20 2QY

RSPB South East Regional Office  
2nd Floor Frederick House  
42 Frederick Place  
Brighton  
BN1 4EA  
Tel. 01273 775333  
Fax. 01273 220236  
[www.rspb.org.uk](http://www.rspb.org.uk)

19 January 2010

Dear Mr Ellames,

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

**Location: London Ashford Airport, Lydd**

**Supplementary information supplied by LAA**

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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 responses to three rounds of supplementary information supplied by the applicant. The applicant has subsequently submitted further supplementary information to Shepway District Council (**SDC**), comprising a report and technical appendices dated December 2009 (**SI 2009**). This supplementary information does not address our concerns regarding the applications; therefore, the RSPB wishes to **maintain its objection**.

This letter relates to SI 2009, however since the RSPB has outstanding concerns that have not been addressed through this round of supplementary information, these are also presented in this letter. Please refer back to our previous responses for full detail.

Our concerns are summarised below. Detailed comments regarding the draft bird control management plan and the nitrogen deposition assessment are detailed in the annex to this letter.

**Updated Draft Bird Control Management Plan (BCMP)**

The RSPB remains concerned that the draft BCMP lacks sufficient detail to fully assess the potential impacts on the Dungeness to Pett Level Special Protection Area (**SPA**) and potential SPA (**pSPA**). This is because:

The applicant has failed to provide information on the location and spatial scale of off-site habitat management. In addition, there is insufficient information on the impacts of “exceptional” bird control activities, whilst the applicant has not assessed the impacts of shooting/controlling and dispersing of hazardous species on non-target species. In the absence of this information, the competent authority will not be able to conclude no adverse effect on the integrity of the SPA/pSPA.

The applicant has failed to take into account the potential impacts of pyrotechnics on the potential Ramsar site (**pRamsar**). Whilst we acknowledge that the pRamsar is not currently afforded statutory protection, once the site is designated, the competent authority would need to review any extant planning permissions under Regulation 50 of the Habitats Regulations<sup>1</sup> (as Government planning policy<sup>2</sup> affords the same protection to listed Ramsar sites as to SPAs); permission may therefore need to be revoked or modified if the development is found to be having an adverse effect on the site. The RSPB therefore advises that that pRamsar be treated as if it were designated, both as good practice and to ensure that all relevant effects from the applications have been assessed before any such necessary review of consents once designated occurs.

The RSPB questions the feasibility of grounding aircraft to avoid crossing wildfowl, including whether it would prove acceptable to the operation of the expanded, commercially run airport. The RSPB remains concerned that the lack of information on bird flightlines and lack of understanding of gull movements means that the birdstrike risk may have been underplayed.

The BCMP details a 13km bird-safeguarding zone, with a locally negotiated “no objections expected” zone. Without this zone agreed prior to permission being granted, the RSPB is concerned that the applicant could object to the restoration of Lade Pit; such an objection within the 13km bird-safeguarding zone is likely to hinder the restoration of Lade Pit and thereby affect the conservation status of the SPA/pSPA. In addition, caveats regarding the “no objection zone” may limit conservation activity and compromise the conservation status of the SPA/pSPA.

It is stated that the BCMP will remain in draft format, which, post permission would be refined with stakeholders such as the RSPB. 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.

In the absence of such information, the RSPB considers that the competent authority cannot conclude no adverse effect on the integrity of the SPA/pSPA.

### **Nitrogen Pollution**

The RSPB considers 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. We consider that the predicted reductions in background levels and the critical load threshold used to assess the effects of nitrogen deposition on the SAC are unreliable and consequently the conclusion drawn by the applicant is not beyond reasonable scientific doubt. The RSPB considers that on the evidence provided, it cannot be determined that there will be no adverse effect on the SAC.

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<sup>1</sup> Conservation (Natural Habitats &c.) Regulations 1994 (as amended)

<sup>2</sup> Planning Policy Statement 9: Biodiversity and Geological Conservation

### **Disturbance to birds from air traffic**

The applicant has acknowledged that increased aircraft noise would impact on birds in and around the SPA<sup>3</sup>. The RSPB is concerned that, since the applicant has still not produced a noise management plan (as was their previously stated 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 on birds will be effective. However, as there is insufficient information provided by the applicant to demonstrate this, the competent authority cannot ascertain no adverse effect on integrity, and therefore consent cannot be granted.

### **Sewerage (solid waste management)**

The options proposed to upgrade the drainage system at London Ashford Airport (LAA) include the installation of cesspools<sup>4</sup>. The applicant has failed to provide sufficient information to ascertain whether the cesspools could have an adverse effect on the SPA/pSPA/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 to determine whether there would be an adverse effect on site integrity. Leaving the choice of upgrade until after planning permission is granted is unacceptable.

### **Landscape and visual amenity**

The applicant 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. 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 at the Reserve.

### **Planning Policy**

The Kent and Medway Structure Plan (2006) and Shepway District Local Plan (2006) include policies supporting expansion at Lydd Airport subject to there being no material harm to/significant impact on internationally designated sites. The RSPB's view is that the SI 2009 (in addition to all previously submitted information) does not demonstrate that there will be no material harm/significant impact on these interests. Therefore, the applications do not comply with these policies.

The South East Plan 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). The Safeguarding Policy outlined in SI 2009 includes all of the Romney Marsh area and the area of strategic opportunity for wetland creation envisaged in Policy NRM5. Wetland creation on Romney Marsh is likely to increase the number of waterfowl crossing the airport and/or its immediate airspace, i.e. it is likely to be in conflict with the local Safeguarding Policy aim of guarding against new or increased bird strike hazards. Therefore, consenting the applications is likely to be in conflict with the 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 Government's commitment of an 80% reduction in emissions by 2050 can be met if aviation emissions are not constrained.

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<sup>3</sup> Supplementary Environmental Information March 2009, volume 1, section 5, paragraph 5.103

<sup>4</sup> Supplementary Environmental Information March 2009, volume 5, appendix 6, section 3

## Conclusion

In the RSPB's opinion, despite further information being supplied, that the applicant has failed to demonstrate that there will not be an adverse effect on the integrity of the SPA/pSPA, pRamsar or the SAC. There are numerous measures, in the BCMP for example, which are not sufficiently detailed to allow for the necessary assessment of the full impacts of those measures on site integrity. In addition, there are some mitigation measures suggested, but without the detail of those measures and how they will work in practice, the competent authority is left with uncertainty as to their effects.

Deferring the finalising (e.g. provision of all necessary details) of the BCMP (for example off-site habitat management) that may impact on designated site is not acceptable, 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/pSPA. This is because the Habitat Regulations require certainty that there will not be an adverse effect on site integrity before permission can be granted.

As the applicant has not been able to provide sufficient information for the competent authority to ascertain that there will not be an adverse effect, the further tests in Regulations 49 and 53 (alternative solutions, imperative reasons of overriding public interest and compensation) of the Habitats Regulations must be met before the applications can be consented. In the RSPB's view, these tests are not met because there may well be less damaging alternative solutions to expansion at Lydd Airport and we do not feel that there are imperative reasons of overriding public interest that would override the impacts on internationally designated sites.

The RSPB therefore believes that Shepway District Council's previous appropriate assessment is still correct, and that there is no option but to refuse permission for the applications.

Should you wish to discuss anything further, please do not hesitate to contact me.

Yours sincerely



Fay Bouri (nee Martin)  
Conservation Officer

### **Draft Bird Control Management Plan**

#### **Agreement with landowners**

The executive summary of the report states that it has been produced in response to SDC's letter dated 15 October 2009. SDC's letter states that they require '*further clarification about a landowner agreement to ensure the deliverability of the BCP in terms of off-site land management*'. However, the applicant has failed to provide this information. For example, no information has been supplied on the location and spatial scale of off-airfield habitat management. Without this information it is not possible to assess the potential impacts of this aspect of the BCMP on designated sites; consequently it cannot be concluded that there will not be an adverse effect on the integrity of the SPA/pSPA.

The RSPB is concerned that the BCMP relies on agreements with nearby landowners (including the RSPB) for off-site habitat management to reduce bird hazard. However, such agreements are not yet in place, and consequently there can be no certainty as to the efficacy of the current draft BCMP, and also whether further actions to control bird strike risk, that could in themselves have an adverse effect on the SPA, would need to be instigated by the airport to maintain aircraft safety.

Section 6.19 of the SI 2009 report states that in order to improve bird hazard management in relation to land management near the airport, consultations have taken place with Natural England (NE) and surrounding landowners. The RSPB owns land in close proximity to the airport, however the applicant has not consulted the RSPB with regard to this issue. In addition, the applicant has failed to provide information on the outcome of consultations with other landowners and NE. The RSPB is concerned that this demonstrates a lack of commitment from the applicant to deal with a very real threat to aircraft safety and how to manage bird hazard in the least damaging manner.

Section 6.2 of the SI 2009 report states that the applicant will actively engage with landowners in a programme of education and collaboration. However, the applicant has not provided information on how this will improve bird hazard management without adversely affecting protected species.

#### **Crossing wildfowl**

Section 7.6 of the updated draft BCMP (SI 2009 Technical Appendix 6), states that crossing wildfowl are a significant hazard to aircraft if they are struck. It states that surveillance will be carried out for crossing wildfowl, and an 'all clear' call to be made once birds have departed. We assume from this that aircraft will not be able to take off or land until the 'all clear' call has been made.

The RSPB questions the feasibility of this measure, including whether it would prove acceptable to the operation of the expanded, commercially run airport. The RSPB remains concerned that the lack of information on bird flightlines and lack of understanding of gull movements means that the birdstrike risk may also have been underplayed.

The applicant previously presented information on bird flightlines<sup>5</sup>. However, as outlined in our letter to SDC dated 1 October 2008, we had (and, in the absence of sufficient information from the applicant to date, continue to have) a number of concerns with the information on flightlines presented, summarised here:

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<sup>5</sup> Supplementary Environmental Information, August 2008

- Flight line information focuses on species for which the SPA or SSSI are designated/notified. However there are additional species that present a bird strike risk, but did not have flightlines assessed, for example herring gull.
- The Wetland Bird Survey (WeBS) data presented is four years out of date.
- There are several species (tufted duck and Mediterranean gull) mentioned as having flightlines that will inevitably cross the airport site, but are not mentioned in the associated Bird Hazard Risk Assessment.

Due to the above concerns, the RSPB does not consider that robust flightline information has been presented, and therefore, that a robust BCMP has been produced. The RSPB is concerned that the lack of relevant data regarding flight lines means that the BCMP is not adequate to deal with the hazard and may need to be amended for safety reasons, altering the impacts on the SPA/pSPA. This therefore prevents assessment under the Habitats Regulations ascertaining no adverse effect on site integrity.

If birdstrike risk is found to be greater once the airport is operational, we are concerned that there could be a requirement for increased bird hazard management, and therefore a greater effect on protected species. 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.

### **Game birds**

Section 7.7.1 of the draft BCMP states that local game shooting has the potential to significantly increase the birdstrike risk, and that this is a key problem for the applicant. Options for influencing game shooting outlined in the draft BCMP are:

- 1) Reporting game shooting activity to Air Traffic Control;
- 2) An assessment by NE on the ecological implications of the shoot on designated land;
- 3) Civil Aviation Authority Navigation Orders; and
- 4) Purchase of land around the airfield to remove shoot and agricultural practices that are deemed a significant hazard.

With regard to points 1) and 2) it is not clear how these options will reduce birdstrike risk. With regard to point 3) the applicant proposes that Part 19 of the Civil Aviation Authority Navigation Order could be invoked; the text from Part 19 states that:

*'A person must not recklessly or negligently act in a manner likely to endanger an aircraft, or any person in an aircraft.'*

In order to understand whether this option is viable, the RSPB would wish to see examples of this Order being successfully used to control game shooting activities at other airports.

With regard to point 4) the draft BCMP states that the area of land proposed to be purchased is shown in figure X, however this figure is missing from the Technical Appendix. Without detail on the spatial extent and nature of proposed changes to land management, it will not be possible to assess potential impacts on the interest features of the SPA/pSPA using this land. A significant proportion of the land surrounding the airport is designated (or will be shortly), therefore the RSPB would be concerned about the impacts of any habitat management by the applicant that would conflict with duties to manage the designated sites favourably for their interest features.

### **Impacts of off-site control on non-target species**

Section 1.4.1 of the draft BCMP states that an element of the plan includes the shooting of hazardous species from within the airport itself **and surrounding area**. In addition, section 5.2 of the BCMP outlines one of the roles of the Bird Control Coordinator to 'undertake control/dispersal action as necessary at breeding, feeding or roosting sites on and **off the airfield**' (emphasis added). The shooting/controlling and dispersing of birds in areas outside the airport boundary clearly has the potential to impact on non-target species including SPA/pSPA, pRamsar and SSSI interest features. The applicant has failed to provide information on the potential impact of such actions (including spatial extent of affected areas likely to be affected by the BCMP, and species likely to be impacted). Consequently, we do not consider that it will be possible for the competent authority to conclude no adverse effect on site integrity.

In addition, section 7.8.1 of the draft BCMP states that exceptional bird control activities may take place well beyond the airport boundary, targeted at exceptional hazards. No information is provided on what constitutes an exceptional bird control activity, or an exceptional hazard. No attempt has been made by the applicant to quantify the risk to interest features of designated sites. However, as the draft BCMP recognises that wildfowl in the area pose a significant birdstrike risk, the RSPB is concerned that, should the applicant deem wildfowl to be an 'exceptional hazard', managing this hazard could adversely affect the integrity of the SPA/pSPA. The draft BCMP goes on to state that exceptional bird control activities will only be coordinated with local landowners. Without agreement from local landowners we assume that 'exceptional hazards' cannot be controlled; the applicant has failed to provide information on how this lack of agreement would impact on the efficacy of the draft BCMP.

### **Bird-scaring cartridges and pistol**

Technical Appendix 5 of SI 2009 presents the results of a study on the impacts of on-airport bird control on bird communities on the adjacent reserve (the study). It concludes that bird assemblages between the airfield and the SPA can be disturbed by pyrotechnics, but proposes that cartridge discharge be confined to areas of the airfield too far away from the SPA/pSPA to affect site integrity. However, it is not clear from the study which areas of the airfield are deemed to be far enough away from the SPA/pSPA so as not to affect site integrity. In addition, this recommendation is not reflected in the draft BCMP.

Section 8 of the draft BCMP presents contradictory recommendations on the use of pyrotechnics to manage bird hazard. Section j) states that cartridges will not be fired over the perimeter fence without written permission by the landowner. However, the zonal map (Appendix A) states that pyrotechnics can be fired in any direction, and thus over designated land.

The study does not address the question of what proportion of the designated bird species would be negatively affected by the bird-scaring activities, and since the study does not include certain elements (as detailed above), uncertainty remains. If the bird scaring cartridges were sounded from a number of locations around the airfield (and any likely off-airfield locations) and the sound levels recorded at a number of receptor sites around the SPA, a picture of the area of the SPA affected by different noise levels could be built up. This could then be matched with survey data on bird populations in order to assess the proportion of populations that could be affected. However, the use of only two 'source' and two 'receptor' points in the study does not enable this to be addressed.

The study focuses on assessing the impacts on the SPA. Section 9.26 of the report states that, although pRamsar sites are not afforded statutory protection, the applicant has carried out assessments under the assumption that the pRamsar is actual, not proposed. This is clearly not the case, since the study has failed to take into account the potential impacts of pyrotechnics on the pRamsar. Whilst we acknowledge that the pRamsar is not currently afforded statutory protection, once the site is designated, the competent authority would need to review any extant planning permissions (under

Regulation 50 of the Habitats Regulations, since Government policy is to afford to same protection to Ramsar sites as to Natura 2000 sites); permission may need to be revoked or modified if the development is found to be having an adverse effect on the site. For this reason we consider that it would be prudent to assess these impacts of the BCMP on the pRamsar at this stage.

### **Bird safeguarding**

The draft BCMP details a 13km bird-safeguarding zone. Section 11.4.2 states that a “no objections expected” zone would be locally negotiated. Without a “no objection” zone agreed prior to permission being granted, the RSPB is concerned that the applicant could object to restoration of the Lade Pit area of the SPA, thereby affecting the conservation status of the SPA.

In addition, the South East Plan advocates wetland creation in the Romney Marsh area (Policy NRM5 – Conservation and Improvement of Biodiversity). The 13km safeguarding zone includes the Romney Marsh area and the area of strategic opportunity for wetland creation envisaged in Policy NRM5. Wetland creation on Romney Marsh is likely to increase the number of waterfowl in the area and thus crossing the airport and/or its immediate airspace, and is therefore likely to be in conflict with the local Safeguarding Policy aim of guarding against new or increased bird strike hazards. Therefore, consenting the applications is likely to be in conflict with the South East Plan.

### **Format of the BCMP**

Section 6.21 of the SI 2009 report states that the BCMP will remain in draft format, which, post permission would be refined with stakeholders such as the RSPB. 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/pSPA, 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 BCMP to control this risk. Therefore, the RSPB’s view is that the applicant has not shown that the BCMP will not have an adverse effect on the SPA/pSPA.

### **Nitrogen Pollution**

Appendix 4 of SI 2009 presents a revised nitrogen deposition assessment (the assessment). We welcome the use of more robust modelling software, however we remain concerned that the use of the Air Pollution Information Service (APIS) critical load range, and a reliance on predicted background levels are inappropriate and have resulted in uncertainty regarding the potential impact on the SAC.

### **Background nitrogen levels**

The assessment is based on the assumption that nitrogen deposition levels are predicted to decrease in the next few years due to measures to reduce emissions in the UK and Europe.

Section 7.2.2 of the Appropriate Assessment (AA) for the draft South East Plan<sup>6</sup> states that the improvement to air quality is only expected to continue until about 2010-2015, after which increasing transport demand may cause these positive trends to reverse.

In addition, evidence submitted by Kent County Council in its objection letter to these applications (dated 30 November 2007) shows that background levels of nitrogen deposition are **increasing** in the Shepway area. Consequently, any deposition associated with the airport development is likely to exacerbate the existing problem.

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<sup>6</sup> The AA of the draft South East Plan is referred to extensively in the AA of the adopted South East Plan.



Even if background levels of nitrogen deposition were likely to decrease, such reductions would be beyond the applicants control, and we therefore consider it is wrong to base conclusions on this presumption.

### **APIS critical load range**

The assessment uses the critical load range set by APIS. We wish to draw attention to section 7.2.2 of the AA for the draft South East Plan, which states that critical loads set by APIS are subject to debate, and are limited in that they do not consider critical loads for individual species, only for habitats.

Given the debate surrounding APIS critical loads, we consider there to be sufficient doubt as to the accuracy of using this range to assess impacts on site integrity.

The RSPB considers that the critical load range of 5 – 10 kgN/ha/yr as recommended by the Cresswell Associates Report commissioned by Kent Wildlife Trust and the RSPB is more appropriate for lichen dominated and acid grassland communities. This estimate is well supported by the literature referred to in the report and makes a strong case for a lower threshold.

The assessment acknowledges that the SAC is already experiencing deposition levels in excess of the lower limit of the critical load range. We consider that a reliance on predicted levels which are uncertain (as stated above), and a critical range which is the subject of debate demonstrates that there is a level of uncertainty surrounding the conclusion drawn in the assessment. In light of this, we consider that the competent authority cannot conclude beyond reasonable scientific doubt that there will not be an adverse effect on the integrity of the SAC.

### **Decision making**

In the RSPB's opinion, despite further information being supplied, that the applicant has failed to demonstrate that there will not be an adverse effect on the integrity of the SPA/pSPA, pRamsar or the SAC. There are numerous measures, in the BCMP for example, which are not sufficiently detailed to allow for the necessary assessment of the full impacts of those measures on site integrity. In addition, there are some mitigation measures suggested, but without the detail of those measures and how they will work in practice, the competent authority is left with uncertainty as to their effects.

Deferring the provision of detail regarding elements of the plan (for example off-site habitat management) that may impact on designated site is not acceptable, 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/pSPA. This is a requirement of the Habitats Regulations.

As the applicant has not been able to provide sufficient information for the competent authority to ascertain that there will not be an adverse effect, the further tests in Regulations 49 and 53 (alternative solutions, imperative reasons of overriding public interest and compensation) of the Habitats Regulations must be met before the applications can be consented. In the RSPB's view, these tests are not met because there may well be less damaging alternative solutions to expansion at Lydd Airport and we do not feel that there are imperative reasons of overriding public interest that would override the impacts on internationally designated sites.

The RSPB therefore believes that Shepway District Council's previous appropriate assessment is still correct, and that there is no option but to refuse permission for the applications.