



nature's voice

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

9 July 2010

Dear Mr Ellames,

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

Location: London Ashford Airport, Lydd

Draft S106 legal agreement and conditions

Thank you for inviting comments from the RSPB on the draft S.106 legal agreement and conditions proposed by LAA, as set out in appendix 4 of the Shepway District Council (SDC) Supplementary Report to inform the Council meeting on 3 March 2010.

Without prejudice to our objection to the applications, or the forthcoming Public Inquiry we have the following comments to make. We consider that the current draft conditions and S.106 are inadequate with regards to avoiding harm to the designated nature conservation sites and we recommend that discussions with key stakeholders¹ as set out in the document be held to address the concerns set out in this letter.

Draft conditions

1. Failure to consider all issues

We disagree with the statement in paragraph 2 that the draft conditions take into consideration issues raised by statutory consultees during consultation periods. There remains serious unresolved issues raised by NE which, we consider, these conditions do not sufficiently address; including, but not limited to, the lack of detail provided in the BCMP and the consequent risk of an adverse effect on the SPA, and the scientific uncertainty surrounding the potential impacts of increased nitrogen deposition on the SAC, and that consequently an adverse effect on the SAC cannot be ruled out.

¹ Page 6 of the draft conditions lists NE, EA and the RSPB as key stakeholders

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2. Approved documents

The draft conditions state that the development will be constructed in accordance with drawings and documents, including the Draft Bird Control Management Plan (BCMP). However, we consider that the BCMP should be finalised rather than in draft format.

3. Construction Environmental Management Plan (CEMP)

Condition 3 states that a CEMP will be submitted to SDC for approval by the LPA prior to the commencement of development. We have raised concerns in our objection letters² regarding the potential impacts of construction on the designated sites. Given that the CEMP will propose noise control measures, we recommend that Natural England and the RSPB be consulted on the production of this document. Should the construction impacts on the designated sites not be addressed through the CEMP, we would recommend that additional conditions be included to mitigate potential impacts (for example timing of works to avoid sensitive periods and/or screening). Further investigative work should be carried out to inform these conditions, and we would be pleased to advise further if necessary.

4. Bird Control Management Plan (BCMP)

Condition 15 states that the BCMP will be submitted and approved by the LPA on consultation with appropriate stakeholders prior to the first flight. We consider that a finalised and approved BCMP document needs to be in place **prior** to permission being granted and any necessary conditions imposed and obligations agreed. With only a draft BCMP, the suggested planning conditions do not (and cannot) resolve the inherent uncertainties involved. For example, what are the ramifications if the BCMP is not approved by key stakeholders (ie Natural England/the RSPB)? The draft BCMP also contains insufficient detail, in its current form, to demonstrate that it will not result in an adverse effect on the SPA. If the BCMP for approval by the LPA contains extra detail that could risk an adverse effect on the SPA³, how and when will this be assessed?

There are also elements of the draft BCMP that are currently outside the control of LAA⁴, consequently we question the enforceability of the BCMP by means of a planning condition.

Since the suggested conditions do not provide certainty that the final BCMP will both be “approved” and not result in an adverse effect on the SPA, the justification of/“need” for condition 15 (BCMP) is, in our opinion, undermined. However, it is clear that a final BCMP is vital to the operation of an expanded airport at Lydd. Therefore, we consider that the draft BCMP needs to be finalised and agreed by all relevant parties before permission is granted, with a planning condition requiring LAA to implement the agreed and finalised BCMP.

5. Informatives

Item 5 in the informative section states that the applicant is encouraged to establish a forum of local landowners whose aim is control bird strike risk. Given that the applicant considers game birds to pose a

² November 2007 and October 2008

³ The wording of draft condition 15 states that the BCMP will give detail on the management programme to minimise the attraction of the airport **and its environs** for birds; clearly there is the potential for a risk of an adverse effect from any necessary management works.

⁴ The draft BCMP states that agreement will be sought with landowners to modify land use practices such as game rearing to reduce bird hazards

significant bird strike risk⁵, we question whether “encouragement” is sufficient to ensure that this aspect of the BCMP is achieved.

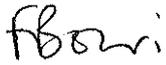
Draft HoT for S106

1. Noise Management Plan

Section 11.1.11 states that a noise management plan will be submitted to SDC for approval. Given that the plan includes a target noise performance standard for aircraft devised specifically in terms of ornithology, we would recommend that Natural England and the RSPB be consulted on the production of this document.

Aside from the above, we have no further comments on the S.106 as there is nothing of relevance to our principal concerns with the applications.

Yours sincerely

A handwritten signature in black ink that reads "fBouri". The letters are lowercase and written in a cursive, slightly slanted style.

Fay Bouri
Conservation officer

⁵ Section 2.6.2. Revised Supplementary Environmental Information, Appendix 4, August 2008