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Your reference

Our reference

SE2/5281/21/40

Date

2 AUG 1990

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1971 - SECTION 35
APPLICATION BY THE LYDD AIRPORT GROUP LTD FOR AN EXTENSION OF 296 METRES TO
THE EXISTING RUNWAY AT LYDD AIRPORT, ROMNEY MARSH, KENT

1. The Secretary of State directed, in pursuance of Section 35 of the Town and Country Planning Act 1971, that Lydd Airport Group Ltd's application for an extension of 296 metres to the existing runway at Lydd Airport, Romney Marsh, Kent, be referred to him for decision instead of being dealt with by the local planning authority. A local inquiry was held by the Inspector Mr Griffin BSc(Eng), CEng, MICE, DipTE, between 27 September and 11 October 1988. The Inspector's conclusions and a full copy of his report were sent to you with the Department's letter of 27 September 1989, a copy of which is attached at Appendix A.
2. That letter indicated that the Secretary of State had given very careful consideration to all the arguments for and against the proposed development and to the Inspector's conclusions, and that he had concluded that, in respect of all the matters covered in paragraphs 3 to 8 of the letter, he would not be justified in withholding planning permission.
3. The letter also indicated that the Secretary of State accepted the Inspector's view that the proposed development would be detrimental to the populations of the rare species of birds at Dungeness and that, on the basis of the evidence available, he was not able to satisfy himself that the disturbance or damage to the birds or their habitats would not be significant, as required by paragraph 26 of Circular 27/87. Nor was he able to satisfy himself that any disturbance to the birds would be outweighed by the economic gains which might follow from the granting of permission. He was, therefore, of the opinion that the application did not satisfy the criteria set out in paragraphs 25 and 26 of Circular 27/87. The Secretary of State therefore indicated that, on the evidence available, he was minded to refuse planning permission for the proposed runway extension. However he further stated that he would be minded to grant permission if he were able to satisfy himself that any damage or disturbance to the birds or their habitats would not be significant in the terms of the European Communities Directive on the Conservation of Wild Birds. In order to assess this issue properly the Secretary of State indicated, as set out at paragraph 11 of the Department's letter of 27 September 1989, that the following information was needed:



(a) Data on the breeding success of terns at Dungeness SSSI in the period 1978-1988 to determine whether periods of more intensive use of Lydd Airport had an effect on breeding success. Data from other UK colonies would also be needed for comparative purposes.

(b) More objective data on the effects of aircraft movements on the breeding success of birds, especially terns.

(c) Data comparing the effects of turbo-prop planes and small aircraft with modern jet aircraft as proposed in your clients' application.

4. The Secretary of State deferred his decision on the application for an initial period of 6 weeks, which was subsequently extended until 31 January 1990, to enable Lydd Airport Group Ltd to submit the requested information.

5. The Secretary of State has considered the further information provided by Lydd Airport Group Ltd a copy of which is enclosed. It partly reiterates evidence that was presented at the inquiry, but it also provides new evidence relating to the three issues identified above. In particular it provides population figures for Common and Sandwich Terns at Burrowes Pit (the present habitation site) since 1978 and breeding success rate figures for the same period. As requested, comparative breeding success rate figures for 6 other tern colonies in the United Kingdom have been provided. With regard to issue (b), Lydd Airport Group Ltd have analysed the published studies and cited anecdotal evidence in support of their case, and have pointed to the paucity of scientific investigation into the disturbance effects of aircraft on birds as an indication of the assumed absence of such effects. With regard to issue (c), data has been provided comparing the noise levels of turbo-prop planes with jet aircraft and also comparing the predicted overall noise environment at Burrowes Pit, if planning permission is not granted, with the noise environment should the runway extension be allowed. The data includes details of flight routes and numbers of air traffic movements.

6. The Secretary of State has had regard to the further information described in paragraph 5 above and has given further consideration to his proposed decision in the light of that information. On the evidence provided, he is inclined to accept Lydd Airport Group Ltd's view that the Common and Sandwich Terns (which were identified as the most important and vulnerable birds colonising the site) have bred successfully at Burrowes Pit since 1978 and that any variation in breeding success during that period does not correspond with variations in aircraft movements at Lydd Airport. He is further inclined to accept their assertion that the differences between predicted noise levels at Burrowes Pit with or without the proposed runway extension would be relatively minor and would not be likely to influence the survival and reproduction of the species.

7. On the new evidence before him, the Secretary of State is disposed to take the view that Lydd Airport Group Ltd have satisfied him, in accordance with Circular 27/87 and the EC Directive on the conservation of wild birds, that the detriment would not be significant in terms of the survival and reproduction of the species. He is also minded, subject to consideration of any further evidence which may be put forward, to grant planning permission for the proposal subject to suitable conditions and the conclusion of an agreement between the Council and Lydd Airport Group Ltd.

8. At the inquiry Shepway D C and Lydd Airport Group Ltd submitted a draft Section 52 Agreement (Inquiry document 4) on which they were agreed (subject to some issues on which they sought the Secretary of State's advice) and a set of agreed conditions (Inquiry document SDC5). The Inspector accepted both documents and recommended accordingly. The Secretary of State agrees with the Inspector that the requirements, obligations, and provisions in the draft S52 Agreement (except restriction 2 of the Second Schedule - see paragraph 12 below) are desirable and reasonable and provide valuable and justifiable safeguards, and that this is a case where there would be every justification for requiring the signing and sealing of an agreement before the grant of planning permission.

9. Further thought has been given to the proposed conditions. It is noted that in some instances they seek to control activities at the airport as a whole and therefore the question arises whether such conditions would be sufficiently related to the development proposed, namely the runway extension. Independent difficulties arise in relation to agreed condition 3 (discussed at paragraph 12 below), but the view is taken that in principle the restrictions proposed would be lawful planning conditions. If the permission sought were to be refused, the airport could well become markedly busier than it is now, but nevertheless its future would be problematical. Lydd Airport Group Ltd have suggested that closure could not be ruled out. However if permission were to be granted, then there is considered to be a high probability of significantly increased activity, using different types of aircraft. In these circumstances it is considered that the controls agreed between the parties would be fairly and reasonably related to the development in question, and otherwise reasonable, subject to further consideration of condition no. 3.

10. With respect to the alternative forms of words suggested for operative clause 4 of the draft agreement, the parties will be aware from paragraph 10 of the Annex to Circular 1/85 that the Secretary of State favours the use of planning conditions rather than agreements because of the greater flexibility they offer, and it is unusual for both to be proposed. However in the particular circumstances of this case, where the parties have directed their minds to the inter-action of the agreed conditions and the proposed agreement, he considers that it would be acceptable to have them both, subject to details of wording. Where possible future changes of circumstances are concerned then, in line with the principle of his published policy, he would prefer the proposed clause 4 to follow the wording suggested by Lydd Airport Group Ltd. He does not find the Council's arguments on the point persuasive. Material factors that are known at the time that a planning application to relax any condition is considered would of course fall to be taken into account at that time. The Council stress that if a condition were to be relaxed they would act reasonably thereafter with respect to bringing the agreement into line. Yet they appear to contemplate that they might decline to vary it just in case some new factor might occur in the future. It is the Secretary of State's preference that the planning decision should prevail. He therefore disagrees with the Inspector on this point.

11. With regard to the disagreement between the Council and the applicants about the precise terms of clauses 2a and 6c of the First Schedule to the proposed Agreement, the Secretary of State agrees with the Inspector's conclusions and recommendations that for clause 2a the applicants' wording is to be preferred and for clause 6c the Council's wording is to be preferred. On a matter of detail, it is noted that no interpretation of 'visual circuit' is provided in operative clause 1 of the draft Agreement.

12. Restriction 2 of the Second Schedule of the draft Agreement, and agreed Condition No 3, refer to the 1979 Air Navigation (Noise Certification) Order. The form of words adopted in the Restriction and the condition does not make it clear exactly what they are intended to achieve. The 1979 Order had been replaced, first by a 1987 Order and now (on 1 August 1990) by the 1990 Order. "Chapter 3" appears to refer to Volume 1 of Annex 16 to the Convention on International Civil Aviation and not to the Order, but the noisier "Chapter 2" aircraft are apparently to be exempt from the limits given in Columns A and B. "Developed Types" and "New Types" in Columns A and B should be defined in the Agreement and in the condition. If the condition is to be imposed, its meaning and purpose will have to be made much more explicit.

13. With regard to Restriction 3 of the Second Schedule of the draft Agreement, and agreed condition no. 4, the Secretary of State agrees with the Inspector and the Lydd Airport Action Group (LAAG) that the wording of the Restriction should be amended to permit the landing or take off of aircraft outside the permitted hours only in an emergency.

14. In the Department's letter of 27 September 1989, it was recorded that HM Nuclear Installations Inspectorate (NII) and the Civil Aviation Authority (CAA) had been consulted as recommended by the Inspector. Also, on the basis of the Inspector's conclusions and the additional advice provided by NII and the CAA, the Secretary of State concluded that the safety considerations involved did not justify a refusal of planning permission provided that it is subject to the conditions and obligations proposed by the Council and provided that the proposed legal agreement includes obligations to cease air traffic movements while rail movements of irradiated fuel are taking place.

15. In their Rule 6(4) statement (Inquiry document SDC Vol 9, Annex 8, item 6), the NII reported that it was their understanding that the normal practice at Lydd Airport is that aircraft movements do not occur during the period that a train carrying a spent fuel flask is travelling past the end of the runway. Lydd Airport Group Ltd having agreed to make this a formal safety requirement, the NII considered that even the extremely remote risk from an aircraft crashing into a spent fuel flask was removed. In view of this and the Inspector's relevant recommendation, the Secretary of State would wish to see appropriate provision made in the First Schedule to the proposed Agreement.

16. In respect of the agreed conditions in Inquiry document SDC5, (a copy of which conditions is attached to this letter for the avoidance of doubt), conditions 1, 2, 5 to 9 and 11 appear to be acceptable in principle and the Secretary of State would be inclined to impose them on a grant of permission to extend the runway. Conditions 3 and 4 are dealt with respectively in paragraphs 12 and 13 above. In respect of condition 10, however, the Secretary of State accepts the Inspector's recommendation ii and considers that it can best be implemented by requiring in a condition that the work of constructing the extended runway should not commence until a scheme of operations, drawn up after consultation with Shepway D C the NCC and the RSPB, had been submitted to and approved by Shepway D C your Council and that development should be carried out only in accordance with the approved scheme. This condition is intended to minimise disruption to nature conservation interests, to maintain the surface water drainage system and to ensure that the aquifer is not disturbed. The conditions suggested by the Action Group (inquiry document LAAG 8), other than those referred to above, are not considered to be necessary.

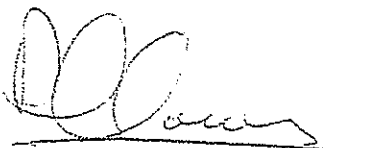
17. Lydd Airport Group Ltd with their letter of 31 January 1990 also provided a summarised re-statement of the economic implications of the proposal, as presented at the inquiry, and a paper explaining the importance of Lydd in relation to airport and runway capacity in the South East. They explained that this evidence was relevant, should the Secretary of State still not be satisfied that the disturbance to the birds would not be significant in terms of the survival and reproduction of the terns, to the issue whether the disturbance would be outweighed by economic requirements. In view of the provisional view formed about the effect on the terns as indicated in paragraph 7 above, the Secretary of State has not, at this stage, considered it necessary to reach any conclusions on this further evidence. The evidence is, however, being made available to the other parties for information and a copy is enclosed.

18. The Lydd Airport Action Group, which gave evidence at the inquiry, and one of their witnesses, Mr Peter Davies of the Federation of Heathrow Anti-Noise Groups, also wrote to the Secretary of State after the inquiry questioning the methods used for the assessment of noise disturbance. Their letters, and the enclosure, have been considered but they do not incline the Secretary of State to alter the view, expressed in paragraph 8 of the Department's letter of 27 September 1989, that the residential amenity considerations, including noise levels, are not such as to justify withholding permission. Copies of the letters are being made available to the other parties for information.

19. Before proceeding to his decision on this application the Secretary of State considers that he should give the parties who appeared at the inquiry an opportunity to consider and to comment on the new evidence referred to in paragraph 5. That further evidence, together with the letter of 31 January 1990, is being copied to all the parties who appeared at the inquiry, under cover of a letter in similar terms to this one, requesting that, if they wish to make further representations on the new evidence referred to in paragraph 5 above they should do so in writing to the above address, within 6 weeks of the date of this letter. This invitation also relates to the proposed amendments to the draft S52 Agreement and the agreed conditions covered in paragraphs 8 to 16 above.

20. Because the new evidence referred to does not dispose the Secretary of State to disagree with any recommendation made by the Inspector, he does not consider that he would be obliged to re-open the inquiry as contemplated by rule 16(5) of the Inquiries Procedure Rules. However those to whom this letter and the letters in similar terms are directed are invited to say, within the period mentioned, if they wish for a re-opening. Consideration will be given to any such request.

Yours faithfully



P J TOWEY