

Lydd Airport Inquiry

Natural England

Note on consultation draft of the National Planning Policy Framework

1. This note responds to the letter from the Planning Inspectorate dated 28 July 2011, following the publication on 25 July of the consultation draft of the National Planning Policy Framework (dNPPF).
2. The dNPPF is a material consideration in the determination of the applications for the expansion of Lydd airport. The dNPPF is however a consultation draft which is subject to potential amendment. It should therefore be given limited weight at this stage.

Sustainable development, habitats and European sites

3. The main plank of the policy in the dNPPF is a presumption in favour of sustainable development. The dNPPF contains three strands to achieving sustainable development – economic, social and environmental – which should be pursued in an integrated way to deliver multiple goals.¹
4. Protecting and enhancing the natural environment is one of those goals.² The DCLG impact assessment for the dNPPF states: “the Government does not believe that growth has to be achieved at the expense of environmental protection”.³
5. The dNPPF provides that the “default answer” does not apply where the result would be to compromise the key sustainable development principles set out in the dNPPF.⁴ One of the core planning principles in the dNPPF is that planning decisions should seek to protect and enhance environmental assets in a manner appropriate to their significance.⁵
6. For the reasons given in its case to the inquiry, NE does not consider that permitting these developments would appropriately protect and enhance the relevant environmental assets in this case, including the habitats within and supporting the SPA, pSPA, pRamsar and SSSI.
7. The dNPPF states (twice)⁶ that:

“Development likely to have a significant effect on sites protected under the Birds and Habitats Directives would not be sustainable

¹ Paragraphs 9-11.

² Paragraphs 2, 9-11.

³ Page 95.

⁴ Paragraph 19.

⁵ Paragraph 19.

⁶ Paragraphs 16 and 170.

under the terms of the presumption in favour of sustainable development.”

8. NE considers that the proposals for the expansion of Lydd airport would not be sustainable under the terms of the presumption in favour of sustainable development, because of their likely significant effects on the European sites (SPA, pSPA, pRamsar) and the SSSI.
9. NE also considers that the adverse impacts of allowing the developments would be substantial and should be weighed in the balance by the Secretary of State against any benefits.⁷
10. The dNPPF also states that planning decisions should be compatible with and where appropriate further the achievement of relevant EU obligations and statutory requirements set out in domestic legislation.⁸ The European and domestic legislative framework was set out in NE’s statement of case. NE considers that the legislative objectives can only be furthered in this case by refusing planning permission.
11. The dNPPF generally reflects the current provisions of national planning policy on biodiversity, including policies to ensure that decisions are based on up-to-date information about the natural environment,⁹ to minimise impacts on biodiversity and to conserve and enhance biodiversity.¹⁰ SSSIs, as national sites, should be given a high degree of protection.¹¹
12. The dNPPF contains in particular the following, reflecting the approach in PPS9 at paragraph 1(vi):¹²

“if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused”.
13. The DCLG impact assessment for the dNPPF makes it clear that the national policy protection given to national and European sites has been retained, in addition to the legal protection given to sites supporting European habitats and species.¹³
14. The dNPPF reflects the national planning policy position as set out in NE’s statement of case at paragraphs 3.29-3.30.
15. Circular 06/2005 will continue to apply unaffected by the NPPF.

⁷ Paragraph 14.

⁸ Paragraph 8.

⁹ Paragraph 34.

¹⁰ Paragraphs 164 and 169.

¹¹ Paragraph 166, footnote 12.

¹² Paragraph 169.

¹³ Page 95.

Protection for emerging European sites

16. The dNPPF also includes clarification on which wildlife sites should be given the same protection as European sites. The DCLG impact assessment for the dNPPF says:¹⁴

“As a matter of policy, the Government has in the past chosen to apply the provisions which apply to European sites to Ramsar sites and potential Special Protection Areas, even though these are not European sites as a matter of law. This is to assist the UK Government in fully meeting its obligations under the Birds Directive and Ramsar Convention.

To ensure that its obligations in respect of the Habitats Directive, the Birds Directive and the Ramsar Convention are fully met in future, and to reduce the risk that any consents granted when a site is being considered for classification would subsequently have to be reviewed (and either revoked or modified at potentially very significant cost) after classification, the Government is proposing to clarify that the provisions which apply to European sites should as a matter of policy also apply to:

- possible Special Areas of Conservation*
- proposed Ramsar sites and*
- sites identified, or required, as compensatory measures for adverse effects on European sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites”.*

17. In relation to the Lydd applications, this policy statement expressly confirms that proposed Ramsar sites should as a matter of policy have applied to them the provisions which apply to European sites. This places proposed Ramsar sites in the same position as Ramsar sites and potential Special Protection Areas.

18. NE’s statement of case dealt with the position of pSPAs at paragraph 3.8 and pRamsars at paragraph 3.12. NE’s view was that the pRamsar should be considered and assessed as if it were a European site. The dNPPF reflects NE’s view as set out in its statement of case.

19. The impact assessment says that European site status should apply from the date at which the government gives the relevant conservation agency (here, NE) direction to consult the public, as at that stage the Government has accepted the scientific case for classification (which is the main criterion) and there is more than a reasonable certainty that the site will be classified in due course. This point has been passed by the pSPA and pRamsar in this case.

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¹⁴ Pages 82-83.