

APP/L2250/V/10/2131934 & APP/L2250/V/10/2131936

SECTION 77 TOWN AND COUNTRY PLANNING ACT 1990 – REFERENCE OF APPLICATIONS TO THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

TOWN AND COUNTRY PLANNING (INQUIRIES PROCEDURE) (ENGLAND) RULES 2000

**GUIDE TO HOW COMMENTS RECEIVED FROM SDC AND RULE 6 PARTIES ON CD17.12, CD17.14 AND CD17.16 HAVE BEEN INCORPORATED, OR OTHERWISE, INTO CD17.23 (SECTION 106 AGREEMENT), CD17.24 (RUNWAY EXTENSION CONDITIONS) AND CD17.25 (TERMINAL BUILDING CONDITIONS)**

In respect of:

Planning Application Reference: Y06/1647/SH (New Terminal Building)

Planning Application Reference: Y06/1648/SH (Runway Extension)

Relating to land at London Ashford Airport, Lydd, Romney Marsh, Kent, TN29 9QL

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1. **COMMENTS FROM SHEPWAY DISTRICT COUNCIL**

1.1 **Comments on Runway Extension Conditions/Reasons – SDC/106**

Ref	Provision in Runway Extension Conditions	SDC Comment	PM Response
1.	2	Some Documents many need to be updated following various Inquiry submissions. SD1 normally referred to in the reason.	SD1 referred to in the reason. The SoCG and various inquiry submissions are incorporated into the draft conditions through the relevant condition, e.g. Condition 11.4.) and the Annexes
2.	3	Refer to SD1 in the reason.	Agreed
3.	4	Heading should also refer to Archaeology. Include reference to SD1, C09 (as relates to SSSI site) and PPS5.	Agreed
4.	11.2	Noted NRM5 excluded from reason, but referred to in all other ecology related conditions.	Agreed and amendments made
5.	12.2	Noted NRM5 excluded from reason, but referred to in all other ecology related conditions.	Agreed and amendments made
6.	13	Noted NRM5 excluded from reason, but referred to in all other ecology related conditions.	Agreed and amendments made
7.	18	Include SD1 and PPS1.	Agreed
8.	19	Include SD1 and PPS1.	Agreed
9.	20	Include 'to neighbours' and SD1.	Agreed
10.	21	Include SD1 and PPS1	Agreed

11.	22	Include SD1.	Agreed
12.	23	Exclude C08 as is not within proposed Ramsar. Include TR11 and PPG13.	Agreed
13.	24	Should include runway lighting. Include SD1 ad U15.	Agreed
14.	25	Include SD1 as it relates to the amenity of Greatstone School. Annex 11?	Agreed
15.	27	Assume reason will be as 26.	No, as the purpose of the Condition is not nuclear related but ecological. Reason included

#### 1.2 Comments on Terminal Building Conditions/Reasons – SDC/106

Ref	Provision in Terminal Building Conditions /reasons	SDC Comment	PM Response
1.	2	Revised Design & Access Statement 2008 should be included. Some Documents may need to be updated following various Inquiry submissions. SD1 normally referred to in the reason.	Revised DAS included. SD1 referred to in the reason
2.	3	Include SD1.	Agreed
3.	4	Include SD1.	Agreed
4.	5	Include PPS5.	Agreed
5.	6-8	Include SD1 and U10a.	Agreed
6.	11	SDC, the Environment Agency and Southern Water require a connection to the main sewer as part of any	Agreed

Ref	Provision in Terminal Building Conditions /reasons	SDC Comment	PM Response
		details. Reason U2 is relevant not U4.	
7.	11.2	Reason U1 is not applicable.	Agreed
8.	12	U4 and PPS25 are applicable, not U1 and U2.	Agreed
9.	13	Refer to revised Design & Access Statement.	Agreed with SDC that no amendment is required to C13, as reference to "Revised" included in Condition 2.
10.	14	And the development is to be completed in accordance with approved details.	Agreed
11.	17	Replace 'any' with 'all' in second sentence, Include reference to any seating and litter bins.	Agreed
12.	18	Include SD1 and PPS1.	Agreed
13.	19	Include SD1 and PPS1.	Agreed
14.	20	Include 'to neighbours' and SD1.	Agreed
15.	21	Include SD1 and PPS1.	Agreed
16.	22	Include SD1.	Agreed
17.	23	Include SD1 and U15.	Agreed
18.	24	Include SD1 as it relates to the amenity of Greatstone School. Annex 2?	Agreed
19.	26	Assume reason will be as 25.	No, as the purpose of the Condition is not nuclear related

Ref	Provision in Terminal Building Conditions /reasons	SDC Comment	PM Response
			but ecological. Reason included

1.3 **Comments raised by SDC in the Conditions Session on 8 September 2011**

Ref	Provision in Terminal Building Conditions/reasons	SDC Comment	PM Response
	11	Request for direct link to the main sewer system	Agreed

1.4 **Additional comments received from SDC on CD17.12 – Draft Section 106 Agreement**

Ref	Provision in S106 Agreement	SDC Comment	PM Response
	Paragraph 3.13	SDC has confirmed that the correct trigger is "Prior to Operation of the Terminal Building."	Amendment made.

2. **COMMENTS FROM NATURAL ENGLAND**

2.1 **Email from Sean Hanna to Mark McLellan 8 September 2011**

Natural England Ref	Relevant planning obligation (S106 Agreement) / condition	NE Comment	PM Response
<b>CD 17.12 Draft Legal Agreement</b>			
-	Paragraph 21 of Schedule 1	<p>We have noticed within paragraph 21 of the Section 106 agreement that not all species are listed where remedial action may be required, should the ecological monitoring indicate that the mitigation is not maintaining the populations. As such, below we have suggested some additional text to insert into the agreement and would be grateful if you could consider these and liaise with your Legal Team.</p> <p>Natural England suggested additional text in respect of paragraph 21</p> <p>21.3</p> <p>In the event that the water vole, grass snake, common lizard, medicinal leech or bat monitoring report submitted to the Council pursuant to the Runway Extension Planning Permission identifies a material decrease in the relative population of the water vole, grass snake, common lizard, medicinal leech or bat within the Airport Site and land within the 1km survey area arising from the Operation of the Runway Extension and/or Operation of the Terminal Building, the Airport Operator shall:-</p> <p>21.3.1 carry out an investigation into the causes of such</p>	Agreed.

Natural England Ref	Relevant planning obligation (S106 Agreement) / condition	NE Comment	PM Response
		<p>decrease and, as soon as reasonably practicable following submission of the water vole, grass snake, common lizard, medicinal leech or bat monitoring report to the Council, submit a scheme of remedial measures to the Council for approval (such approval to be in consultation with Natural England) detailing the measures to remedy such decrease; and</p> <p>21.3.2 implement, subject to the Airport Operator securing all necessary Requisite Consents, the scheme approved by the Council pursuant to paragraph 21.1.1 of this Schedule 1 as soon as reasonably practicable and in any event no later than six months of the Council's approval (unless otherwise agreed with the Council).</p>	
<b>CD17.14 Draft Conditions (Runway Extension)</b>			
-	10.4	Bird nest survey – this is a common approach in medicinal leech survey work.	Agreed.
-	11.4.4	There is a need to reference an Annex here for the Medicinal Leech to reflect what had been agreed through the Ditch Mitigation SoCG. The Appendix 3 to LAA/9/C has been superseded.	Agreed.
-	14.2.2	Would the text 'which may affect any habitat used by Great crested newt 'help to include the terrestrial habitat that GCN use as well as the aquatic habitat. We think this is important to include.	Agreed.



Natural England Ref	Relevant planning obligation (S106 Agreement) / condition	NE Comment	PM Response

## 2.2 Email from Richard Broadbent dated 9 September 2011

Natural England Ref	Relevant planning obligation (S106 Agreement)	NE Comment	PM Response
Email from Richard Broadbent dated 9 September 2011 following conditions session.	BCMP Monitoring – paragraph 11 of Schedule 1	For the avoidance of doubt, the change which Natural England would like to see to the monitoring of the BCMP, and the related remedial measures provisions, is to make it apply in every year of the expanded airport's operation (as per our comment at 1.19 at 2 in CD 17.18). This would be achieved by deleting from Schedule 1, paragraph 11.1, the words " <i>Subject to paragraphs 11.2 to 11.6 of this Schedule 1</i> " and also deleting paragraphs 11.2 to 11.6.	Agreed.

## 2.3 Comments raised by Natural England in the Conditions Session on 8 September 2011

Natural England Ref	Relevant planning obligation (S106 Agreement)	NE Comment	PM Response
Comments made by Richard	Paragraph 11.1 of Schedule 1	There should be continuous monitoring (i.e. annual and ongoing), rather than the monitoring obligations being contingent on the number of movements (e.g.as the 40,000 movements could all be light aircraft).	Agreed. Amendment made to provide for annual and ongoing monitoring.

Natural England Ref	Relevant planning obligation (S106 Agreement)	NE Comment	PM Response
Honey.			
Comments made by Richard Honey.	Paragraph 19.7.1 of Schedule 1	Remove the text in brackets which makes reference to the 'adverse impact on the integrity' on the pRamsar and SPA, the threshold ought to be 'significant adverse effect'.	Agreed

3. **COMMENTS FROM THE RSBP RAISED AT CONDITIONS SESSION 8 SEPTEMBER 2011**

RSBP Reference	Relevant planning obligation (S106 Agreement)	RSPB Comment	PM Response
Comments made by David Forsdick	Paragraph 12.5.2 of Schedule 1	There needs to be a feedback point to ensure that the remedial measures are triggered in the instance that the requisite consents are not (or can not be) obtained. It is suggested that 'where practicable' is substituted for 'where not continuous'.	Agreed. See paragraph 12.5.2 and paragraph 12.9.
Comments made by David Forsdick	Paragraph 12.6 of Schedule 1	<p>The only sanction, in the instance that the BCMP is not approved by the Council, is that the airport's growth is restricted; though this sanction is not effective if the airport has already reached its maximum capacity. Therefore such an instance of non-approval by the Council ought to be included in the definition of 'Dispute', which will give rise to expert determination in such circumstances.</p> <p>Further, the period of time that the Council will have to make a decision before a 'Dispute' arises ought to be determined.</p>	Agreed. See paragraphs 12.7, 12.8 and 12.9
Comments made by David Forsdick	Paragraph 11.1.8 of Schedule 1	'interested features...' should be changed to 'interest features and supporting habitats'.	Agreed - see paragraphs 11.2.4, 11.2.8 and 12.5.
Comments made by David	Definition of "Bird Control Management Plan"	RSBP objects to the wording 'shall be in accordance with' as this is not sufficiently clear.	Amendment made to definition of Bird Control Management Plan; 'in accordance with' replaced with 'substantially in accordance with'.

RSBP Reference	Relevant planning obligation (S106 Agreement)	RSPB Comment	PM Response
Forsdick			

4. COMMENTS FROM CPRE DATED 07 SEPTEMBER 2011

Ref	Relevant planning obligation	CPRE Comment	PM Response
1.	Paragraph 16.1 of Schedule 1	No fixed sum (£10,000) for the Sound Insulation Survey = acceptable.	It is considered by SDC and the Airport Operator's noise consultants that the "Survey Fee" is acceptable. No amendment justified.
2.	Paragraph 16.2 of Schedule 1	<p>All monies for the fee to pay for the Survey = Acceptable.</p> <p>Payments to be made to Greatstone Primary School = what about supervision costs in managing the Consultant, over and above the Consultant's fees (say 2% = c £200).</p>	<p>The total "Survey Fee" and the £90,000 for the Mitigation Measures (with an additional commitment to provide up to a further £12,000 if needed due to overspend following CPRE'S concerns (£12,000 based on a contingency of 12% which is usual in the construction industry)) is considered reasonable to cover all costs.</p> <p>Whilst the impact on the School is negligible, the Airport Operator recognises that there will be a noise increase from current levels; the Environmental Statement, and noise evidence before the inquiry report that the worst case noise impact at Greatstone Primary School is predicted to occur between the baseline year and when the 500,000 ppa point is reached with the new terminal. This amounts to a 5 dB increase (from baseline levels to the Airport operating at 500,000ppa).</p> <p>Recognising the increase whilst also recognising that the increase remains negligible, the proposed obligation as amended is considered reasonable.</p>
3.	Paragraph 16.3.1 of Schedule 1	Approval of Consultant by SDC = acceptable.	Noted

Ref	Relevant planning obligation	CPRE Comment	PM Response
4.	Paragraph 16.3.2 of Schedule 1	Copy of the Survey report to SDC on completion = acceptable.	Noted
5.	Paragraph 16.4 of Schedule 1	Pay-back to Airport Operator of any monies above that required for Survey and for Mitigation Measures, with interest - and full survey fee with interest if not used within 5 years = acceptable.	Noted
6.	Paragraph 16.5 of Schedule 1	Weight (45 tonnes) trigger point monitoring, on 3-month intervals + does weight strictly correlate to noise? - what about planes of 44 tones, which are noisy (e.g. freight)? Is 3 months notice to the school adequate?	<p>We have now removed reference to 45 tonnes. Payment of £90,000 towards Mitigation Measures will be made on Completion of the Runway Extension – see paragraph 16.5 of Schedule 1.</p> <p>This amendment removes CPRE's concern over the trigger point for monitoring as well as the lead-in time for the School.</p>
7.	Paragraph 16.6 of Schedule 1	<p>Second and in-combination approach of trigger levels – 300,000 ppa or 45 tonnes – payment of £90,000 to SDC within 28 days of application from SDC =</p> <p>a) does weight and/or passengers strictly correlate to noise levels?</p> <p>b) SDC must apply for payment – not automatic</p> <p>c) Payment alone is one month on from theoretical increase in noise levels - how much later could mitigation measures be completed, with consideration to the need to fit in with the school calendar?</p>	<p>We have now removed reference to 45 tonnes. Payment of £90,000 towards Mitigation Measures will be made on Completion of the Runway Extension – see paragraph 16.5 of Schedule 1.</p> <p>This amendment removes CPRE's concern over the trigger point for monitoring as well as the lead-in time for the School.</p>
8.	Paragraph 16.7 of Schedule 1	<p>Similar to 16.2: all monies to be used for mitigation measures = acceptable.</p> <p>Again, what about supervision costs in managing the installation contractor(s)?</p>	<p>Noted.</p> <p>See comment for paragraph 16.2 above.</p>

Ref	Relevant planning obligation	CPRE Comment	PM Response
9.	Paragraph 16.8 of Schedule 1	SDC to account for money spent, to Airport Operator = acceptable.	Noted
10.	Paragraph 16.9 of Schedule 1	Similar to 16.4: pay-back of un-used money = acceptable.	Noted
Additional Notes	Paragraph 16.6 / 5.5 of Schedule 1	CD17.12, clause 16.6 quotes a payment of £90,000 - yet CD17.18, clause 5.5 quotes a payment of £100,000.	<p>£10,000 to be paid as the "Survey Fee" for the Sound Insulation Survey. If not all of the Survey Fee is utilised, then it can be used towards the Mitigation Measures.</p> <p>£90,000 to be paid towards Mitigation Measures on Completion of the Runway Extension.</p> <p>Airport Operator to pay any excess sum for the Mitigation Measures subject to a maximum cap of £12,000 (being 12% of £100,000).</p>
Un-answered Issues 1.		The Nursery Block, outside teaching area, and play areas cannot be sound proofed (CPRE/10/C - report by Parsons Brinkerhoff - Executive Summary). So will these amenities be forced to suffer noise disruption or lost?	<p>Should the school wish to allocate a proportion of the payment made by the Airport Operator towards Mitigation Measures then the School has the discretion to do so. It must be remembered that the increase in noise of 5db is from baseline levels to the Airport operating at 500,000ppa. Further, as evidence has shown, the increase is considered negligible and would occur for the short amount of time the aircraft is landing/taking-off at the Airport.</p> <p>In conclusion, it is considered that paragraph 16 as amended is reasonable.</p>
2.		The payment of £90k (£100k?) is generous - but what if it is not enough? What if a new Nursery Block is required for	See comments above.

Ref	Relevant planning obligation	CPRE Comment	PM Response
		<p>example? Who will make up the difference?</p> <p>The school has only £8k in its budget for building works SDC don't have the remit to use public money for this. But there is nothing to tie the Airport Operator into additional costs.</p>	
3.		<p>There does not appear to be a satisfactory means of giving adequate notice to the school – both of impending increases in noise levels – and to make necessary arrangements for the mitigation measures while causing the least disruption to the school calendar.</p>	<p>We have now removed reference to 45 tonnes. Payment of £90,000 towards Mitigation Measures will be made on Completion of the Runway Extension – see paragraph 16.5 of Schedule 1.</p> <p>This amendment removes CPRE's concern over the trigger point for monitoring as well as the lead-in time for the School.</p>
Additional Comments		<p>Trigger points for the consideration of mitigation measures and payments towards them are 300,000 ppa and 45 airlift tonnes.</p> <p>These pre-suppose there is a direct correlation between both ppa and tonnes to noise levels at the school.</p> <p>Has any consideration been given to real-time noise monitoring at the school?</p> <p>We can accept that parallel metrics, such as ppa or tonnage, are the only means of gauging some impacts. But with noise, this can easily be measured, so there is no need to use such less-accurate parallels.</p>	<p>We have now removed reference to 45 tonnes. Payment of £90,000 towards Mitigation Measures will be made on Completion of the Runway Extension – see paragraph 16.5 of Schedule 1.</p> <p>This amendment removes CPRE's concern over the trigger point for monitoring as well as the lead-in time for the School.</p> <p>We have now removed reference to 45 tonnes. Payment of £90,000 towards Mitigation Measures will be made on Completion of the Runway Extension – see paragraph 16.5 of Schedule 1.</p> <p>This amendment removes CPRE's concern over the trigger point for monitoring as well as the lead-in time for the School.</p>



Ref	Relevant planning obligation	CPRE Comment	PM Response
		<p>I recognise that a noise report was submitted with the application, but this is predictive, not actual. While the accuracy of these predictions has already been questioned during the Inquiry, they are no substitute to real-time measurement of the actual events (which is not possible). So why not establish conditions around real-time noise monitoring and associated trigger levels?</p>	<p>Comment no longer applicable given amendments to paragraph 16. See comments above.</p>
		<p>Note that Paragraph 13: Noise Management Plan includes for monitoring – so why can this paragraph not be linked into paragraph 16 for the school?</p>	<p>Comment no longer applicable given amendments to paragraph 16. See comments above.</p>

5. COMMENTS RAISED BY ANDREW OGDEN IN THE CONDITIONS SESSION ON 8 SEPTEMBER 2011

Reference	Relevant planning obligation	David Ogden School Comment	PM Response
1.	Paragraph 16 of Schedule 1	Use of monitoring system to provide a threshold limit for when noise mitigation would be paid.	<p>Comment no longer applicable given amendments to paragraph 16.</p> <p>Payment of £90,000 towards Mitigation Measures will be made on Completion of the Runway Extension – see paragraph 16.5 of Schedule 1.</p> <p>This amendment removes any concern over the trigger point for monitoring as well as the lead-in time for the School.</p>
2.	Paragraph 16 of Schedule 1	Timing of mitigation provision - must not interrupt school year, and realistically only the summer holiday of six weeks is available for substantive works.	<p>Payment of £90,000 towards Mitigation Measures will be made on Completion of the Runway Extension – see paragraph 16.5 of Schedule 1.</p> <p>This amendment removes any concern over the trigger point for monitoring as well as the lead-in time for the School.</p>
3.	Paragraph 16 of Schedule 1	Not enough money to cover all the necessary measures.	<p>The total "Survey Fee" and the £90,000 for the Mitigation Measures (with an additional commitment to provide up to a further £12,000 if needed due to overspend following CPRE'S concerns (£12,000 based on a contingency of 12% which is usual in the construction industry)) is considered reasonable to cover all costs.</p> <p>Whilst the impact on the School is negligible, the Airport Operator recognises that there will be a noise increase from current levels; the Environmental Statement, and noise evidence before the inquiry report that the worst case noise impact at Greatstone</p>

Reference	Relevant planning obligation	David Ogden School Comment	PM Response
			<p>Primary School is predicted to occur between the baseline year and when the 500,000 ppa point is reached with the new terminal. This amounts to a 5 dB increase (from baseline levels to the Airport operating at 500,000ppa).</p> <p>Recognising the increase whilst also recognising that the increase remains negligible, the proposed obligation as amended is considered reasonable.</p>
4.	Paragraph 16 of Schedule 1	Protection of outside areas, nursery building and covered courtyard area.	<p>Should the school wish to allocate a proportion of the payment made by the Airport Operator towards Mitigation Measures then the School has the discretion to do so. It must be remembered that the increase in noise of 5db is from baseline levels to the Airport operating at 500,000ppa. Further, as evidence has shown, the increase is considered negligible and would occur for the short amount of time the aircraft is landing/taking-off at the Airport.</p> <p>In conclusion, it is considered that paragraph 16 as amended is reasonable.</p>

6. COMMENTS RAISED BY LAAG IN THE CONDITIONS SESSION OF 8 SEPTEMBER 2011

Reference	Relevant planning obligation (S106 Agreement) / condition	LAAG Comment	PM Response
1.	Paragraph 16 of Schedule 1	Reference to 45 tonne weight.	<p>Payment of £90,000 towards Mitigation Measures will be made on Completion of the Runway Extension – see paragraph 16.5 of Schedule 1.</p> <p>This amendment removes any concern over the trigger point.</p>
2.	-	Incorporation of a condition for RNAV flight path	See our response to this point in CD17.18.
3.	-	Need for the NII to be consulted.	The NII has been consulted has clearly advised the Inquiry of its position.