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Our ref: SE2/5281/21/40

24 September 1992

Sirs

TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 77  
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 (now Section 77 of the Town and Country Planning Act 1990), that your client'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 M 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, and a further copy of the report, together with a note from the Inspector, dated 5 November 1990, which is to be annexed to the report, is enclosed. Also to be annexed are the two enclosed letters, dated 25 October 1990 and 6 November 1990, from this office to the Planning Inspectorate and from the Inspectorate to this office respectively. The letters and the Inspector's note were originally sent to you by this office under cover of a letter dated 15 November 1990. The Department's letters of 27 September 1989 and 2 August 1990 (both referred to below) are annexed to this letter and should be read in conjunction with the contents herein.

The Department's letter of 27 September 1989

2. The Department's letter of 27 September 1989 reported the Inspector's recommendation that planning permission be granted subject to an Agreement under Section 52 of the Town and Country Planning Act 1971 between the applicant and Shepway District Council being completed and subject to conditions. The letter also 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.

3. The Secretary of State indicated his understanding of the fears of the local residents concerning the safety aspects of the

proposal with regard to the nuclear power station and possible bird strikes to aircrafts. He noted that Shepway District Council had consulted both HM Nuclear Installations Inspectorate and the Central Electricity Generating Board on this matter before the local inquiry was held. With restrictions on the annual number of aircraft movements and on the flight paths and runways used as proposed by the District Council and the opportunity to make representations in the event of changes to Lydd Airport Group's Air Traffic Control Instructions (which is promised by the Council) the Inspectorate raised no objection to the proposal. The Central Electricity Generating Board agreed with this conclusion.

4. The letter of 27 September 1989 stated that the Secretary of State had also, since the local inquiry, consulted the Nuclear Installations Inspectorate and the Civil Aviation Authority as recommended by the Inspector. The Nuclear Installations Inspectorate explained that in the case of the Dungeness A and B reactors, both the Central Electricity Generating Board's and the Inspectorate's assessments, conducted independently, showed that the risk of an aircraft crashing onto the Dungeness Power Station and leading to an uncontrolled release of radioactivity was below their published risk criteria. The risk from an aircraft crashing onto the external air ducts on Dungeness 'A' or at pile cap level at Dungeness 'A' and 'B' and on the cooling ponds was even more remote. The Civil Aviation Authority explained that a small runway extension such as that proposed at Lydd Airport was unlikely to have any effect on the existing bird hazard at Lydd and that there was unlikely to be a need to expand the existing bird control measures should the extension be approved.

5. On the basis of the Inspector's conclusions and the above information, the Secretary of State concluded that the safety considerations involved did not justify a refusal of planning permission provided it was made subject to the conditions and obligations proposed by Shepway District Council and provided the proposed legal agreement included obligations to cease air traffic movements while rail movements of irradiated fuel were taking place.

6. The Secretary of State agreed with the Inspector that the proposal was in accordance with national and local planning policies provided that the effects on the Dungeness Site of Special Scientific Interest (SSSI) and on residential amenity could be shown not to exceed an acceptable level. The Secretary of State did not consider that the residential amenity considerations recorded by the Inspector justified withholding permission.

7. However, the Secretary of State also had had regard to the effect of the proposal on the adjoining Site of Special Scientific Interest, which had been identified as having the potential for classification as a Special Protection Area (SPA) for birds under the provisions of the European Communities Directive 79/409/EEC on the Conservation of Wild Birds. The Secretary of State considered that the application should be treated as an application to which paragraphs 25 and 26 of DOE

Circular 27/87 applied. On the basis of the advice contained in the Circular, which sets out the Government's obligations under the EC Directive and the measures necessary to ensure that these obligations are met, the Secretary of State accepted the Inspector's view that this proposed development would be detrimental to the population of the rare species of birds at Dungeness. On the evidence available the Secretary of State 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 may follow from the granting of permission. Therefore, in his opinion the application did not satisfy the criteria set out in paragraphs 25 and 26 of the Circular.

8. The Inspector concluded that the SSSI might be better served in the long term by a gradual expansion of Lydd Airport to some predetermined limit with an ongoing measure of control rather than allowing its expansion to be unconstrained. However, in the opinion of the Secretary of State a development which was unacceptable under Circular 27/87 should not be permitted simply because it would allow conditions to be imposed on the use and development of the application site. Other means existed should it be necessary to control any expansion of the use of the airport which may take place following the withholding of permission.

9. The Secretary of State therefore decided that, on the basis of the evidence before him, he would not be justified in granting the permission sought and accordingly he was minded to refuse permission for an extension of 296 metres to the existing runway at Lydd Airport.

10. However, the Secretary of State indicated in his letter of 27 September 1989 that, if he was 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, he would be minded to grant the permission sought. In order to be in a position to decide whether any such damage or disturbance would not be significant the Secretary of State considered 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 client's application.

11. Consequently, the Secretary of State invited your client to submit to him the required information, which would then be considered in accordance with the Town and Country Planning (Inquiries Procedure) Rules 1988. The decision on the application was deferred and sufficient time was allowed for your client to produce the information. Copies of the letter of 27 September 1989 were sent to Shepway District Council and to all those who had appeared at the local inquiry or had submitted written representations.

12. The information requested was provided under cover of your letter of 31 January 1990.

The Department's letter of 2 August 1990

13. After considering the further information provided by your client, the Department issued a second letter, dated 2 August 1990, indicating the Secretary of State's response to the further information and his proposed decision.

14. This letter incorporated the Secretary of State's view that the further information provided by your client partly reiterated evidence that was presented at the inquiry, but also provided new evidence relating to the three issues identified in paragraph 10 above.

15. The Secretary of State gave further consideration to his proposed decision in the light of the further information received. He indicated, in the letter of 2 August 1990, that, on the evidence provided, he was inclined to accept your client's view that the Common and Sandwich Terns (which were identified as the most important and vulnerable birds colonising the site) had bred successfully at Burrowes Pit since 1978 and that any variation in breeding success during that period did not correspond with variations in aircraft movements at Lydd Airport. He was further inclined to accept your client's 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.

16. On the evidence before him, the Secretary of State was disposed to take the view that your client had 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 was also minded, subject to consideration of any further evidence which might be put forward, to grant planning permission for the proposal subject to suitable conditions and the conclusion of an agreement between the Council and your client.

17. At the inquiry Shepway DC and your client submitted a draft Agreement (Inquiry document 4) under Section 52 of the Town and Country Planning Act 1971 (now Section 106 of the Town and Country Planning Act 1990) 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, as recorded at paragraph 2 above. The Secretary of State agreed with the Inspector that the requirements, obligations, and provisions in the draft Agreement (except restriction 2 of the Second Schedule - see paragraph 22 below) were desirable and reasonable and provided valuable and justifiable safeguards, and that this was a case where there would be every justification for requiring the signing and sealing of an agreement before the grant of planning permission.

18. With regard to the proposed conditions, it was noted that in some instances they sought to control activities at the airport as a whole and therefore the question arose whether such conditions would be sufficiently related to the development proposed, namely the runway extension. Independent difficulties arose in relation to agreed condition 3, but the view was 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 was, but nevertheless its future would be problematical. Your client suggested that closure could not be ruled out. However if permission were to be granted, then there was considered to be a high probability of significantly increased activity, using different types of aircraft. In those circumstances it was 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.

19. With respect to the alternative forms of words suggested for operative clause 4 of the draft Agreement, the parties were reminded of paragraph 10 of the Annex to Circular 1/85, which indicates the Secretary of State's preference for the use of planning conditions rather than agreements because of the greater flexibility they offer. It is unusual for both to be proposed. However in the particular circumstances of this case, the parties having directed their minds to the interaction of the agreed conditions and the proposed agreement, he considered that it would be acceptable to have them both, subject to details of wording.

20. The Secretary of State indicated in the letter of 2 August 1990 that, where possible future changes of circumstances were concerned then, in line with the principle of his published policy, he would prefer the proposed clause 4 to follow the wording suggested by your client. He did 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 had stressed that if a condition were to be relaxed they would act reasonably thereafter with respect to bringing the agreement into line. Yet they appeared to contemplate that they might decline to vary it just in case some new factor might occur in the future. It was the Secretary of State's preference that the planning decision should prevail. He therefore disagreed with the Inspector on this point.

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

22. Restriction 2 of the Second Schedule of the draft Agreement, and agreed Condition No.3, referred to the 1979 Air Navigation (Noise Certification) Order. The letter of 2 August 1990 made clear the Secretary of State's view that the form of words adopted in the Restriction and the condition did not make it clear exactly what they were intended to achieve. It was therefore asked that "Developed Types" and "New Types" in Columns A and B should be defined in the Agreement and in the condition. If the condition were to be imposed, its meaning and purpose would have to be made much more explicit.

23. With regard to Restriction 3 of the Second Schedule of the draft Agreement, and agreed condition no.4, the Secretary of State agreed 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.

24. In the Department's letter of 27 September 1989, it had been 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 had concluded that the safety considerations involved did not justify a refusal of planning permission provided that it was subject to the conditions and obligations proposed by Shepway DC and provided that the proposed legal agreement included obligations to cease air traffic movements while rail movements of irradiated fuel were taking place.

25. In their Rule 6(4) statement (Inquiry document SDC Vol 9, Annex 8, item 6), the NII had reported their understanding that the normal practice at Lydd Airport was that aircraft movements did not occur during the period that a train carrying a spent fuel flask was 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 indicated his wish to see appropriate provision made in the First Schedule to the proposed Agreement.

26. In respect of the conditions agreed at the Inquiry, the Secretary of State indicated that conditions 1,2,5 to 9 and 11 were acceptable in principle and that he would be inclined to impose them on a grant of permission to extend the runway.

Conditions 3 and 4 were dealt with separately, as referred to in paragraphs 22 and 23 above. In respect of condition 10 however, the Secretary of State accepted the Inspector's recommendation ii and considered that it could 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 DC, the NCC and the RSPB, had been submitted to and approved by Shepway DC, and that development should be carried out only in accordance with the approved scheme. This condition was intended to minimise disruption to nature conservation interests, to maintain the surface water drainage system and to ensure that the aquifer was not disturbed. The conditions suggested by the LAAG (inquiry document LAAG 8), other than those referred to above, were not considered to be necessary.

27. The Department's letter of 2 August 1990 also referred to your client's summarised re-statement of the economic implications of the proposal, which was appended to your letter of 31 January 1990 together with a paper explaining the importance of Lydd in relation to airport and runway capacity in the South East. Your client had 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 of whether the disturbance would be outweighed by economic requirements. However, in view of the provisional view formed about the effect on the terns (referred to in paragraph 16 above), the Secretary of State did not, at that stage, consider it necessary to reach any conclusion on this further evidence. The evidence was, nevertheless, made available to the other parties for information.

28. 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, had also written to the Secretary of State after the inquiry questioning the methods used for the assessment of noise disturbance. Their letters, and the enclosure, were considered but the Secretary of State indicated, in the letter of 2 August 1990, that they did not incline him 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, were not such as to justify withholding permission. Copies of the letters were, nevertheless, also made available to the other parties for information.

#### FURTHER CONSIDERATIONS

29. As indicated in paragraph 19 of the letter of 2 August 1990 the Secretary of State considered that the other parties who appeared at the inquiry should be given the opportunity to consider and to comment on your client's new evidence. Consequently, those parties were invited to respond to the new evidence and to proposed amendments to the draft Section 52 (under the 1971 Town and Country Planning Act - now Section 106 of the Town and Country Planning Act 1990) agreement and the

agreed conditions referred to in paragraphs 8 to 16 of the letter.

#### RESPONSES TO THE LYDD AIRPORT GROUP LTD'S NEW EVIDENCE

30. In response to the invitation referred to in paragraph 29 above a number of representations were received, commenting on your client's new evidence. These representations were copied to you for your comments and two further exchanges of correspondence were arranged. All the arguments contained in the further representations have now been carefully considered.

31. Many of the responses to the Department's letter of 2 August 1990 concerned matters that had already been discussed at the inquiry and which have been dealt with in the Department's letter of 27 September 1989.

32. Of the remaining responses, the Lydd Airport Action Group claimed that much of the new evidence provided by the applicant in response to the Department's letter of 27 September 1989 was irrelevant insofar as it related to other UK tern colonies which differed in their characteristics from the ternery at Burrowes Pit. They argued that evidence of non-disturbance by aircraft at these other UK colonies therefore could not reasonably be applied to the potential situation at Lydd.

33. The LAAG also referred to a report by the Civil Aviation Authority which suggested that the number of aircraft movements per annum at Lydd may be considerably higher than the number on which your client's evidence regarding noise impact was based; thereby invalidating your client's evidence. They also contended that further information on bird species other than terns, which might be affected by the proposed development, should be collected before consideration be given to granting planning permission; and that further research was necessary in relation to the situation at RAF Valley, which had been cited in evidence by the applicant.

34. The LAAG referred to the wording of proposed condition 4, asking that it should exclude the reference to "necessary diversions". Lastly, they contended that as Shepway District Council had a financial interest in the land at Lydd Airport they could not be considered impartial in their decisions relating to development at Lydd.

35. The Secretary of State has taken these comments into account and has considered your client's responses, which were copied to the LAAG during the exchange of representations following the Department's letter of 2 August 1990. On the first point (paragraph 32 above) the Secretary of State accepts your clients' argument that it is common practice to use experience of other sites to provide an indication of the likely environmental implications of a new project and that there is no reason to believe that behavioural responses of birds at Dungeness should differ significantly from those at other locations. He is therefore of the view that the evidence provided by your client in respect of other tern colonies is acceptable and useful in providing information that is relevant to his decision in this



case.

36. With reference to the LAAG's point concerning the CAA report (paragraph 33 above), the Secretary of State points out that, in the event of permission being granted for the extension to the runway at Lydd Airport, the number of aircraft movements per annum would be controlled by means of conditions attached to such grant of permission.

37. The LAAG's <sup>local outdoor group.</sup> contention that further information on bird species other than terns, and in relation to the situation at RAF Valley, should be provided, has also been considered; but the Secretary of State, whilst accepting that disturbance to the birds present at Burrowes Pit would affect species other than tern species, accepts your client's points that the RSPB has expressed no significant concern in relation to species other than terns and that wintering birds referred to would be less likely to suffer disturbance threatening the survival and reproduction of their species than would the breeding colonies of terns. The Secretary of State has considered the relevance of the history of the RAF Valley ternery at Ynys Feirig and, for the reasons which he gives at paragraph 55 below, he is satisfied from the evidence supplied that the situation at Ynys Feirig is not comparable to that at Dungeness. He is therefore satisfied that sufficient information has been provided in this case to enable him to reach a decision.

38. Regarding the LAAG's reference to the wording of proposed condition 4, the Secretary of State repeats his statement in paragraph 13 of the Department's letter of 2 August 1990 (referred to at paragraph 23 above), that the wording of Restriction 3 of the Second Schedule of the draft Section 106 agreement should be amended to permit the landing or take off of aircraft outside the permitted hours only in an emergency. He confirms that this will also apply to the wording of proposed condition 4 in the event of permission being granted.

39. The matter concerning Shepway District Council's alleged partiality in deciding planning applications (paragraph 34 above) is not relevant to the Secretary of State's decision in this case. The remaining matters raised by the LAAG during the exchange of correspondence were considered at the local inquiry and were dealt with in the Department's letter of 27 September 1989.

40. The Nature Conservancy Council (referred to here as the NCC, but now known as English Nature), in their responses to your client's new evidence, largely commented in relation to matters that were considered at the local inquiry, and insofar as this was the case, these matters were dealt with in the Department's letter of 27 September 1989. In addition the NCC commented that the lack of documented evidence on aircraft disturbance of birds does not inevitably mean that such disturbance does not exist. Further, the NCC referred to the use, in your client's new evidence, of bland statements and they contended that no significant new data had been provided by your client beyond that presented at the local inquiry. They additionally contended that the experimentation referred to in your client's new evidence as

being required to assess what effect the aircraft would have on the birds (if the concept of "uniqueness" of the situation at Dungeness was accepted), was impractical and that, even if the aircraft using an extended runway were subsequently shown to be having a detrimental effect upon the birds, the operators would be unlikely to stop using the runway.

41. The NCC requested that, if the Secretary of State was still minded to grant planning permission, the applicant should be asked to fund a monitoring programme (to be agreed with the RSPB and NCC) to gather further data on the effects of aircraft on the tern populations at this location.

42. The Secretary of State has considered the comments of the NCC and your client's responses. Your client accepts that the lack of documented evidence does not inevitably mean that aircraft do not have a disturbing effect upon birds. The Secretary of State has, however, already accepted, in the Department's letter of 27 September 1989 (reiterated at paragraph 7 above), that the proposal would have some detrimental effect upon the birds. No evidence has been presented since the issue of that letter to cause him to change that view. He has noted your client's argument that the lack of such evidence indicates that workers in the appropriate field do not consider the issue worthy of special research or comment, but he is satisfied that in this particular case there is sufficient evidence to enable him to maintain his view that there would be some detriment to the birds. In any event he considers that he has to address himself to the significance of any such detriment. In this regard, he notes the NCC's contention, related in paragraph 40 above, that your client has produced no significant new evidence since the local inquiry. The Secretary of State does not accept this argument and repeats what was stated in paragraph 7 of the Department's letter of 2 August 1990, namely that the new evidence presented by your client disposes him to take the view that they have satisfied him that the detriment to the birds at Dungeness would not be significant in terms of the reproduction and survival of the species at this site. No evidence has been presented since the issue of that letter that causes him to alter this view.

43. The Secretary of State notes NCC's comment concerning the impracticality of experimentation, to ascertain the possible effects of aircraft upon birds. The issue of monitoring, if planning permission is granted, is discussed at paragraph 44 below.

44. With regard to the request by NCC referred to in paragraph 41 above for the applicant to fund a monitoring programme the Secretary of State is of the view that, in the event of planning permission being granted, such a request should not be incorporated in a condition attached to the permission. Not only is the ternery at Burrowes Pit located neither within the application site nor upon land controlled by your client, but its distance from your client's land is such that the Secretary of State considers it most unlikely that it would be possible for the monitoring programme to be carried out from the application site or from land within your client's control. In those

circumstances the Secretary of State considers that he could not impose a condition requiring your client to carry out such a monitoring programme. He has therefore considered whether instead your client should be required by condition to fund such a programme. In this regard he notes that control over the use of particular flight tracks does not rest solely with your client, and he considers that there would be no guarantee that data from such a programme indicating an adverse effect upon the terns at Burrowes Pit would lead to any alteration in the pattern of use of particular flight tracks. In considering this question, the Secretary of State has also had regard to paragraph 63 of the Annex to DOE Circular 1/85. In the light of these considerations the Secretary of State has concluded that he could not impose such a condition and that, even if he could, he would not do so on the ground that it would in all the circumstances be unreasonable to do so. The Secretary of State accepts, however, that a monitoring programme would be of considerable beneficial use and he therefore expects that, if planning permission is granted, your client will liaise with English Nature and the RSPB with a view to setting up a monitoring programme in order that comparison of results prior to the runway extension being built with results following completion of the runway will enable an assessment to be made of what effects, if any, aircraft movements might have on the success of the terns at this location. In this regard the Secretary of State notes the Inspector's conclusion that the means to monitor the effect of the granting of planning permission for the runway extension upon the SSSI form part of the Section 106 agreement. The Secretary of State agrees with the Inspector for, insofar as the Section 106 agreement provides for the monitoring of aircraft movements, he considers that provision has been made for the gathering of data relating to airport activities which will be available for comparison with the results of any monitoring carried out of the birds at Dungeness.

45. Several of the comments made by the Royal Society for the Protection of Birds (RSPB) cover matters that were discussed at the local inquiry or which have been addressed by either the LAAG or the NCC and have been considered above. The following matters concern issues raised by the RSPB which have not been specifically addressed above, or were not dealt with in the Department's letter of 27 September 1989.

46. The RSPB contended that no new evidence had been presented by your client which materially affected the issue of disturbance to Annex 1 bird species (in the EC Directive on the Conservation of Wild Birds) and that, as some disturbance of the terns by jet aircraft was likely, three issues were particularly relevant:

a) the precautionary principle, which should be upheld in this case, because the precise effects of aircraft movements upon the birds at Burrowes Pit could not be determined;

b) the existence of a decision letter (DOE reference APP/J2020/A/89/132024) dated 18 June 1989, in which the Secretary of State refused permission on an appeal by Unigate on the grounds that the proposed

development created a potential threat to the wild bird population of an area which was an SSSI and potential SPA;

c) the emphasis in Circular 27/87 on exploring other available sites, which had not been done in this instance.

47. In addition, the RSPB made the following points:

i. The case must be viewed in the context of the EC Directive, not just Circular 27/87, and the key phrase in the Directive concerned ensuring the survival and reproduction of the bird species in their area of distribution.

ii. In response to the applicant's new evidence the RSPB's view was that immature large gulls (non-resident) would be more disturbed by the aircraft, with the resulting flight becoming a disturbance stimulus to the terns, leading to likely increased predation.

iii. The increase in numbers of terns at Dungeness may not be because the aircraft were having no effect, as that argument ignored the RSPB management work at the reserve. It may be that without the aircraft the colony could be stronger still; and the applicant's figures were, in any event, based on past circumstances and did not reflect possible effects of commercial jets.

iv. The inferences drawn from the comparative breeding success data for the seven Sandwich tern colonies were not realistic and controlled experiments needed to be carried out to provide reliable results.

v. The reference in the applicant's new evidence to the ternery at Ynys Feirig (RAF Valley) flourishing was not correct, and parts of the RSPB report which were not quoted in the new evidence, referred specifically to aircraft disturbance as a cause of breeding failure.

48. In addressing the views of the RSPB the Secretary of State has taken into account the responses of your client, which were sent to the inquiry parties during the exchange of correspondence.

49. With regard to the point at paragraph 46(c) above, the local inquiry into the proposed runway extension did not consider the possibility of alternative sites, but the inquiry, and subsequent procedures, have properly concentrated on assessing the proposal on its merits and in the light of normal planning criteria. Furthermore, paragraph 25(c) of Circular 27/87 states that consideration may be given to alternative sites where there is a threat of significant disturbance to birds. The significance of any possible disturbance to birds in this case is a matter

which has been thoroughly examined. The Secretary of State's conclusions on this issue are at paragraph 60 below. He further notes that, in any event, the proposed development in this case is the extension of an existing runway to accommodate different aircraft types rather than the construction of an additional runway.

50. With regard to the point at paragraph 46(b) above, the Secretary of State notes your client's response that the Unigate appeal decision is not comparable to the situation at Lydd, although no reasons were given for why your client took this view. Nevertheless, the Secretary of State is of the view that the appeal decision is not significant in his consideration of the current proposal, the development proposed being of a distinctly different nature. The appeal was refused on its merits and it should be noted that the Secretary of State's refusal was based, *inter alia*, on the Inspector's conclusions that there was a potential threat to the SSSI/potential SPA posed by the development and that the beneficial effects of the proposal were not considered sufficient to outweigh his conclusions on both the potential threat to the SSSI/potential SPA and on visual impact. The Inspector on the Unigate appeal made the opposite recommendation to the Inspector's recommendation in this case, and the Secretary of State agreed. Both the appeal and this case have been judged on the evidence available in each instance and in the light of their individual circumstances, and therefore a decision to grant permission for the Lydd Airport runway extension would not be inconsistent with the Unigate appeal decision.

51. As for the application of the 'precautionary principle' (paragraph 46(a) above), this would, in any event, only apply in cases where there is a dearth of substantive evidence. In this instance, as already indicated, the Secretary of State considers that there is sufficient evidence to enable him to reach a decision on the merits of the case and, as indicated elsewhere in this letter, the Secretary of State remains of the view that any detrimental effect upon the birds resulting from the proposed runway extension would not be significant within the terms of the EC Directive on the Conservation of Wild Birds.

52. With reference to paragraph 47(i) above, the Secretary of State has given consideration to this case taking into account the requirements of the EC Directive on the Conservation of Wild Birds as well as the contents of Circular 27/87.

53. With regard to the RSPB's point at paragraph 47(ii) above, your client's response was that the threat of disturbance by gulls had been a factor for the past ten years and the lighter aircraft would, under the "do-min" scenario (which examines the operational characteristics likely to result from the future operation of Lydd Airport on the existing runway) presented in their original evidence, continue to fly unrestricted over the ternery, compared with the proposed regulated commercial movements approximately 1 km away. The Secretary of State accepts that there is no evidence to suggest the runway extension would create a greater threat of disturbance by gulls, or that predation would consequently be likely to increase.

54. In relation to the point at paragraph 47(iii) above, your client has responded by stating that, given the evidence produced on their behalf, showing lower reproductive success of terns at other UK colonies not affected by aircraft, they cannot accept the RSPB's argument that the colony would possibly be stronger still if there were no aircraft disturbance. They have also pointed out that the RSPB's contention, that figures based on past circumstances did not reflect possible future effects of commercial jets, illustrated a lack of understanding of their case, which was that the airport had been used in the past by more and noisier aircraft than is proposed with the runway extension. The Secretary of State accepts this latter argument, but in respect of the former he is of the view that it is possible that the strength of the colony might be greater if there were no aircraft disturbance. However, the Secretary of State is of the opinion that the evidence produced by your client strongly supports the argument that the proposed development will not significantly affect the success of the terns in terms of the survival and reproduction of the species at Dungeness.

55. The Secretary of State's response to the argument at paragraph 47(iv) above has been dealt with in paragraph 35 of this letter. Your client's response to the RSPB's point (paragraph 47(v)) regarding the RAF Valley ternery at Ynys Feirig is that the situation at Ynys Feirig is not comparable to the situation at Dungeness, in respect of the large numbers of military fixed wing and helicopter movements and the proximity of the ternery to the flight path. The Secretary of State agrees with the RSPB that evidence may suggest a relationship between increased use of the flightpath directly over the tern colony at Ynys Feirig in 1986 and the desertion of the colony. However, he accepts your client's view that the situation at Ynys Feirig is not comparable to the situation at Dungeness, particularly in relation to the circumstances prevailing in 1986, the nature and number of flights, and their proximity to the birds, being of a different order to those proposed at Lydd.

56. All other representations received since the Department's letter of 2 August 1990 have either not raised material issues or, if they have raised such issues, those issues have been ones already considered by the Secretary of State.

#### THE SECRETARY OF STATE'S CONCLUSIONS

57. As indicated above, the Secretary of State has given full consideration to the new evidence produced by the Lydd Airport Group Ltd, to the comments thereon provided by the parties present at the inquiry, and to all subsequent comments provided during exchanges of correspondence. The Secretary of State has already indicated (at paragraph 51 above) that he considers that sufficient evidence has been placed before him to enable him to reach a decision in this case.

58. The Secretary of State notes that, in the Department's letter of 27 September 1989, he recorded that he had consulted the Civil Aviation Authority (CAA) and Nuclear Installations Inspectorate (NII) on safety considerations, as recommended by

(10) Prior to the commencement of development a scheme shall be submitted to and approved by the Local Planning Authority for the screening of the proposed runway lighting to prevent nuisance in adjoining residential areas and the agreed scheme of screening shall be carried out before the said system of lighting is brought into operation.

67. Copies of this letter have been sent to all the parties appearing at the inquiry and those who submitted representations.

68. This letter does not convey any approval or consent required under any enactment, byelaw, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

69. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged in court.

I am Sir  
Your obedient servant



T E Radice  
Authorised by the Secretary of State  
to sign in that behalf