

APPLICATIONS BY LONDON ASHFORD AIRPORT LIMITED

SITE AT LONDON ASHFORD AIRPORT, LYDD ROMNEY MARSH, KENT

CLOSING SUBMISSIONS ON BEHALF OF THE SHEPWAY DISTRICT COUNCIL

INTRODUCTION/STRUCTURE

1. Having heard all the evidence which has been placed before the Inquiry, Shepway District Council's position remains one of strong support for the applications by London Ashford Airport Limited for permission for a runway extension and a new passenger terminal at LAA, Lydd.
2. When calling in these applications for his own determination, the two substantive issues on which the Secretary of State asked to be advised¹ were:
 - (1) accordance with the existing and emerging development plan for the area;
 - (2) the impact of the proposals on the designated ecological sites and protected species.

Although the call-in letter does not exclude consideration of other issues,² in SDC's submission the Secretary of State was right to identify these as the two main issues. Subject to the Secretary of State being satisfied on the second (which, for the reasons set out below, we suggest he should be) there is clear development plan

¹ **CD1.47**

² If nothing else, any other concerns would fall for consideration under item (d), "any other material considerations"

support for these applications. None of the “other considerations” which have been raised by the Rule 6 parties or local residents calls for a decision otherwise than in accordance with that support.

3. In seeking to make good that submission, this Closing Statement addresses the following issues:

- (1) Procedural issues: the basis of assessment;
- (2) The overarching policy framework: overall compliance with the development plan and national policy; the weight to be attached to the 1992 decision;
- (3) The ecological issues, in particular as they relate to the internationally designated sites and the SSSI;
- (4) Objections raised by CPRE, LAAG and other local residents:
 - Air Quality
 - Alternative Sites: Manston
 - Highways
 - Flooding
 - Noise and tranquillity
 - Nuclear safety
 - Viability
 - Localism
 - SDC’s handling of the applications
- (5) The economic benefits of the proposals;
- (6) Conditions and the s. 106 Agreement;
- (7) Conclusions

PROCEDURAL MATTERS: EIA, AA AND THE BASIS OF ASSESSMENT

4. In its evidence to this Inquiry, LAAG has argued that both the process of Environmental Impact Assessment (“EIA”) and the Appropriate Assessment under the Habitats Regulations (“AA”) should be carried out on the basis of a throughput of 2 million ppa.³ If LAAG’s arguments in this regard are correct, consideration of any of the evidence which has been presented to this Inquiry is redundant, and indeed this whole Inquiry has been a waste of time. It would therefore be sensible for the Secretary of State to deal with this argument as a preliminary point.

5. Our main response to this issue is contained in our legal submissions, which we will not repeat here. However, in reply to paras 26-27 of LAAG’s Closing Submissions (in which LAAG contend that their position is supported by advice from the Council’s solicitor, Teresa Grutchfield), we must point out that LAAG have obviously not read that advice⁴ carefully enough:
 - (1) Because⁵ it misattributes to Ms Grutchfield an Opinion which was in fact provided by Counsel (Paul Brown);
 - (2) Because (contrary to LAAG’s assertion) that Opinion explicitly concludes that the AA should be conducted on the basis of 500,000 ppa.⁶

6. LAAG’s further contention⁷ that it is “not acceptable” to leave the cap on numbers to be dealt with by condition is flatly contradicted by reg. 61(6) of the 2010 Habitats Regulations, which provides (emphasis added) that:

“In considering whether a plan or project will adversely affect the integrity of the site, the authority *must* have regard to the manner in which it is proposed to be carried out or to any

³ Wider compliance with the EIA Regulations is dealt with in **LAA/116**

⁴ **CD2.9** pp. 36-56 para 19

⁵ as should have been apparent from the signature at the end

⁶ see para 29(1)

⁷ LAAG Closing, para 27

conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given.”

In other words, not only is it *acceptable* to consider the fact that it is proposed to cap these applications at 300,000 and 500,000 ppa; it would be an *error of law* not to do so.

THE OVERARCHING POLICY FRAMEWORK

7. In SDC’s submission there is clear policy support for the principle of expansion at Lydd Airport, both at the development plan level and in national policy.

The Development Plan: Call-in Issue (a)

8. The current “development plan” comprises the Regional Spatial Strategy, and the saved policies of the Shepway District Adopted Local Plan Review. However, these are simply the latest iteration in a series of development plan policies which have supported expansion at Lydd. As the Inspector’s Report to the Secretary of State in connection with the 1992 permission reveals, Structure Plan and Local Plan support for expansion dates back to at least the early 1980s: the Kent Structure Plan (2nd Alteration) described increased aviation at Lydd as “very welcome”,⁸ while what was then the Romney Marsh Local Plan⁹ considered there was scope for increasing aviation services even above the 1979 peak of 60,900 movements per annum¹⁰. Significantly, these policies would have been drafted at a time when the practical implications of activity on that scale were still fresh in people’s memory.

⁸ see reference at **CD8.27(a)** para 3.32

⁹ see reference at **CD8.27(a)** para 3.36

¹⁰ as occurred in 1979: see **CD8.27(a)** para 3.4

9. In the light of the Secretary of State’s decision in 1992¹¹ (which specifically rejected concerns based on noise, nuclear safety and impact on the ecology of the area) it is scarcely surprising that development plan support for expansion continued. So, for example, Policy P11 of the Kent Structure Plan 1996 supported proposals for the expansion of aviation activity at Lydd, subject to environmental, traffic and employment implications.¹² When the Kent and Medway Structure Plan¹³ was adopted, Policy P11 was replaced by Policy TP25, which again stated that:

“The expansion of aviation at Lydd Airport will be supported”

Para 8.59 of the KMSP specifically referred to LAA’s view that the airport could grow to 2m ppa.

10. Although these documents are no longer part of the development plan, it is significant that the strategic development plan document for Shepway has consistently and explicitly supported the expansion of Lydd for a period of at least 25 years. Moreover, as its written submission to this Inquiry demonstrates¹⁴, this remains KCC’s position today.
11. In terms of the current development plan, strategic guidance is now to be found in the South East Plan.¹⁵ Given the wider scope of the RSS it is not surprising that, although Policy T9 identifies the *regional* potential of larger airports such as Southampton and Manston, it does not specifically refer to Lydd. However, para 8.30 states that:

“Other smaller airports could play a valuable role in meeting local demand and contributing to regional economic development. Subject to relevant environmental considerations, their

¹¹ **CD1.46**

¹² See para 11.40 of the Shepway District Local Plan Review **CD7.5**, as confirmed by Mr Lloyd’s evidence for CPRE Kent at **CPRE/01/D** para 4.6.

¹³ **SDC/4/B App 1**

¹⁴ **KCC-W-1**

¹⁵ **CD7.1**

development should be supported, and regional and local planning frameworks should consider policies which facilitate growth at these airports.”

12. Lydd is one of these “smaller airports”, and the consistency of the current applications with regional strategy is reflected in the absence of any in-principle objection from the former South East Regional Partnership Board, and the fact that SEEDA welcomed the “relatively small-scale nature” of the aviation expansion proposed.¹⁶

13. Turning to the Local Plan, although the Shepway District Local Plan Review¹⁷ pre-dates the South East Plan, it in fact does precisely what para 8.30 of the RSS advises. In particular, Policy TR15 states that:

“The District Planning Authority will permit proposals for the expansion of facilities at Lydd Airport directly related to the commercial and recreational flying use provided there would be no significant impact upon the internationally important wildlife communities in the Lydd/Dungeness area. Regard will also be given to the likely effect of proposals on other special features in the area, particularly the power station.”

14. Para 11.40 of the Local Plan identifies LAA as an important facility for the District and an important source of employment for Romney Marsh. Mirroring the advice in the former KMSP, para 11.41 refers to the potential to support activity on a scale of 1 to 2 million passengers per annum.

15. Policy TR15 and its associated text are important in a number of ways:

- (1) Para 11.40 specifically recognises the importance of the Airport as a source of employment on the Marsh. This is entirely consistent with SDC’s evidence on the economic benefits of LAA’s proposals;

¹⁶ see SDC/4/A para 3.9

¹⁷ CD7.5

- (2) Para 11.41 gives a clear indication of the scale of expansion which could be expected. While stating that Lydd is “unsuitable for use as a new airport for London”, it refers (without any hint of criticism) to KCC’s support for growth on a scale of 1 to 2 million ppa. These two sentences must be read together. The fact that the owners have chosen to rename Lydd the “London Ashford Airport” (a decision which Ms Congdon candidly described as “misconceived”)¹⁸ may have caused confusion in the minds of some objectors, but if para 11.41 is read as a whole it is clear¹⁹ that a throughput of 2m ppa would not, as a matter of development plan policy, turn Lydd into a “new airport for London”. It is therefore significant that LAA’s proposals contemplate growth to only a quarter of that level. The applications therefore fall comfortably within the scale of expansion for which the Local Plan provides support;
- (3) Policy TR15 plainly identifies the airport site as being “suitable for a particular land use”, and is therefore an “allocation” within the meaning of the Local Plan.²⁰ Consequently, Policy TR15 takes precedence over Policy CO1.²¹ While it is true that the runway extension goes beyond the boundary of TR15 as it appears on the proposals map:
- TR15 expressly refers to the “expansion” of facilities at Lydd Airport. As Mrs Congdon explains, the runway extension is necessary to enable this expansion to take place. However, as Mr Ellames observed, it would have been difficult to show this on a map until there was a concrete proposal.²² Nonetheless, the Local Plan clearly supports it;

¹⁸ Congdon xx by LAAG Day 16 am

¹⁹ contrary to Mr Bingham’s suggestion: see letter of 25 February 2011 para 3

²⁰ see Glossary at p. 137

²¹ see the “Note” at the end of Policy CO1

²² Ellames xx by CPRE, Day 32 am

- The extension is not something which could “practicably be located within an existing settlement”. Indeed, it could not be located anywhere other than at the end of the existing runway.
- (4) While Policy TR15 does not preclude the need for particular proposals to be assessed against the other policies of the Local Plan, it is site specific. Moreover, the policy singles out what are considered to be the key issues for expansion at Lydd: impact on the internationally designated sites, and likely effects on the nuclear power station;
- (5) For the reasons set out in the officers’ Report to Committee, and in the evidence of Mr McGrath²³ we do not consider there is any conflict with the more extensive list of criteria in other policies such as Policy SD1 (to which we return below), but for the present, we merely point out that it is implicit in Policy TR15 that - provided proposals remain within the bounds set by para 11.41 - the expansion of the airport can be achieved without unacceptable impacts in relation to those matters.

For example, criterion (a) in Policy SD1 is the need to

“Shape new development patterns in a way which reduces the need to travel, especially by car, and increases the attractiveness of walking, cycling and public transport.”

Some objectors have suggested that Lydd is too isolated to satisfy this criterion. However, the relative remoteness of the airport is specifically referred to in para 11.41 of the Local Plan. Since it was known about, and expressly identified at the time when TR15 was adopted, it cannot logically be an objection to development in accordance with TR15. Such an approach would make TR15 meaningless. Rather, when read together with TR15, criterion (a) should operate to encourage the developer to improve the

²³ LAA/14/A paras 9.26-9.62

airport's accessibility by non-car modes – a consideration which has, in the present case, been taken on board fully through the s. 106 agreement.

In SDC's submission, the same approach should be taken to the other criteria in Policy SD1. The sole exception to this is criterion (d), insofar as it relates to the internationally designated wildlife sites, because Policy TR15 itself expressly makes support for growth of the airport subject to this consideration.

16. In summary, the current proposals fall well within the scale of growth anticipated by both past and present development plans. Subject to the issues impact of on the internationally designated sites and the NPS, both the regional and the local components of the development plan provide clear overarching support for the principle of expansion at Lydd.

The Emerging Development Plan: Call-in Issue (b)

17. In terms of the *emerging* development plan, SDC is currently working towards the Core Strategy of its LDF, and has recently published its Core Strategy Proposed Submission Document ("CSPSD") for public consultation.²⁴ Having regard to the advice in para 18 of "The Planning System: General Principles"²⁵ the CSPSD is not something on which any significant weight should be placed. But if weight is placed on it, the emerging document is entirely consistent with SDC's historic position. Hence, para 5.117 of the CSPSD explicitly refers to SDC's view that:

"the expansion of Ashford International Airport at Lydd has been regarded by Shepway District Council as an important development opportunity for Romney Marsh, with the potential to increase connectivity to southern Shepway and beyond, and to provide direct and indirect employment benefits."

²⁴ CD7.12

²⁵ CD6.16

18. In their evidence to this Inquiry, CPRE Kent have argued that the CSPSD signals a change of heart on the part of the Council, and that the Local Plan's clear policy support for development at Lydd is being watered down. That is emphatically not the case:

- (1) The very fact that the Council is here, at this Inquiry, is evidence of its continued strong support for the proposals;
- (2) While Policy RM3 of the Preferred Options Report²⁶ left open the possibility that the Council might recognise Lydd Airport as a "strategic site", it expressly recognised that any decision to this effect would have to be guided by the Secretary of State's decision on the applications before this Inquiry. That same point is now found in paras 5.118-9 of the CSPSD. This is the reason why the CSPSD does not commit itself unequivocally to the expansion of Lydd: given the detail in which this Inquiry is considering some of the key issues affecting the airport, it is sensible to wait and see what the Secretary of State decides. If permission is granted, the Council will need to consider what remaining scope there is for additional development. If permission is refused, the Council will need to consider the reasons why, before it can come to any conclusion on the scope for some alternative form of development to come forward. We cannot predict what the Secretary of State will decide, and so - for the moment - the Council needs to ensure that the Core Strategy will be sound, no matter what the outcome of this Inquiry;²⁷
- (3) In the meantime, para 5.108 makes it clear that the "spatial strategy" for the area is to:

"seek regeneration to assist settlements in asserting their role in defining the Romney Marsh as a unique place to live and work, supporting improved communications and

²⁶ CD7.6, para 10.23

²⁷ Ellames xx by CPRE, Day 32 am

respecting its natural environments, achieving additional employment and housing opportunities.”

As the Local Plan observes, LAA is one of the few significant opportunities that exist on Romney Marsh to provide the “additional employment” which is needed to underpin this regeneration. The proposals before this Inquiry are entirely consistent with this.

19. In short, it is simply not the case that the emerging Core Strategy represents a weakening in the Council’s position, or undermines the clear policy support in the adopted Local Plan.

National Policy

20. In terms of national aviation policy, the “Future of Air Transport” White Paper²⁸ encourages airport growth to meet rising demand, especially in the South East. It advises²⁹ that:

“Small airports have an important part to play in the future provision of airport capacity in the South East.”

LAA is identified as a small airport, the growth of which should not be overlooked in helping to meet local demand.³⁰ Para 11.99 states the government’s “in principle” support for the development of Southend, Lydd, Manston, Shoreham and Biggin Hill.

21. In contending that the White Paper does *not* support LAA’s proposals, LAAG has made much of the statement in the foreword that:

²⁸ **CD5.24**

²⁹ para 11.93. See also para 11.11, penultimate bullet point.

³⁰ see para 11.98

“Our starting point is that we must make best use of existing airport capacity.”

LAAAG argue that this means that no *new* development should be allowed at Lydd until the airport has fully utilised its existing runway and terminal capacity.

22. As is demonstrated by the post-White Paper grants of permission for a runway extension at Southampton, and the major extension of the terminal at Bristol³¹, this argument is misconceived. Although the White Paper describes making best use of existing capacity as the “starting point”, it nowhere suggests that no other steps may be taken until this avenue has been exhausted. Indeed, the following paragraph in the foreword goes on to record the government’s view that:

“increased capacity *is needed* at a number of airports across the country, including some new runway capacity, more terminal capacity and support facilities.”

The “need” is expressed in the present tense. It is self-evident that “new runway capacity” and “more terminal capacity” will involve runway extensions and new terminal buildings. Nowhere in the White Paper does it say that this “need” should only be met once every last ounce of capacity has been squeezed out of the existing facilities, and it is illogical to assume that this is what the White Paper intends. In the circumstances, it is not surprising that, when paras 11.98-11.99 state the government’s “in principle” support for the operators’ plans for development at Southend, Lydd and Manston, they do not qualify this by requiring the development to be put on hold until all existing capacity is used up.

23. The foreword to the White Paper should also be read alongside the Future of Air Transport Progress Report,³² which states that:

“the first priority is to make the most of the UK’s existing airports *through a process of improvement and modernisation*”

³¹ LAA/4/J para 9

³² CD5.25 para 1.12

24. The reality is that “making best use of existing capacity” will frequently involve some element of development, whether in the form of an extended runway, a new or larger terminal building or additional infrastructure, simply in order to bring an existing facility up to modern standards. Lydd is a prime example of this: the airport and terminal were built in the 1950s, and were designed to cater to passengers who wanted to take their cars to and from France. Whatever the airport’s throughput then, it was not designed for modern security requirements or for large numbers of people who wish to travel with their luggage, but leave their car behind. Far from being inconsistent with the need to “make best use of existing capacity”, the present proposals are designed to help Lydd achieve that objective.
25. CPRE and RSPB³³ attack the White Paper from a different angle, arguing that little weight should now be attached to it in view of the statement in “Developing a sustainable framework for UK aviation”³⁴ that the White Paper is “fundamentally out of date, because it fails to give weight to the challenge of climate change”. However, this argument overlooks a number of things:
- (1) at least in the case of international flights, outside the scope of s. 30 of the Climate Change Act. The Secretary of State’s position, as set out in his decision on Farnborough Airport, is that this issue is more properly dealt with through the EU Emission Trading Scheme.³⁵ CPRE explicitly recognise that their objection is inconsistent with the Farnborough decision.³⁶
 - (2) as with Farnborough, the Secretary of State’s recent decision on the Crawley Appeal³⁷ confirms that the White Paper “sets out a long-term national strategy for the sustainable development of air travel to 2030” and “remains extant”;

³³ RSPB Legal Submissions paras 33-36

³⁴ **CD5.36**

³⁵ **CD9.22** para 16

³⁶ **CPRE/06/D** para 1.1

³⁷ **LAA/111** para 11

(3) **CD5.36** is simply a scoping document. It is not a statement of national policy, nor (though it could easily have done so) does it say that the 2003 White Paper should no longer be taken into account. Indeed, although it indicates that any new policy will have to give greater weight to climate change, it also makes it clear that the Coalition continues to regard the aviation industry as “essential for a dynamic economy as well as to improve our well-being and quality of life”. There is nothing in the scoping document which gainsays or contradicts the advice in the White Paper that “Air travel is essential to the United Kingdom’s economy” or that “Our economy depends on air travel”³⁸. Rather, the scoping document says “We are not anti-aviation – we are anti-carbon”. The government remains “firmly focused on the benefits that aviation can bring, particularly in terms of economic growth”. As Mr Lloyd (for CPRE) accepts, there is no suggestion that the Government has withdrawn its support for the role of regional airports;³⁹

(4) The same message is found in:

- the Ministerial Statement “Planning for Growth”⁴⁰ which identifies a:

“pressing need to ensure that the planning system does everything it can to help secure a swift return to economic growth”

and advises that:

“Government’s clear expectation is that the answer to development and growth should wherever possible be ‘yes’, except where this would compromise the key sustainable development principles set out in national planning policy.”

³⁸ **CD5.24**, foreword

³⁹ Lloyd xx by LAA Day 33 pm

⁴⁰ **CD5.37**

- The August 2011 Government Response on Climate Change,⁴¹ which describes presenting the challenge as one of “deciding between economic growth and reducing carbon emissions” as a “false choice”. The Response concludes that the targets in the Climate Change Act can be met without the need to cap aviation activity.⁴²
- (5) In fact, the most significant change in aviation policy since publication of the White Paper has been the Coalition government’s announcement cancelling support for a third runway at Heathrow and for additional runways at either Gatwick or Stansted.⁴³ Far from undermining the White Paper, this can only add to the pressure in the South East, and so bolster the case for expanding smaller airports such as LAA;
- (6) In any event, the present applications are entirely consistent with the desire to make aviation “more sustainable”:
- At present, the closest airport with any significant choice of destinations for the majority of people living within 1 hour’s drive from Lydd is Gatwick. As the evidence of Mr Coventry⁴⁴ indicates, providing this catchment area with the opportunity to fly from Lydd would result in a significant saving in CO₂ emissions arising from travel to and from their nearest airport.
 - Lydd is closer to most European destinations than any other Airport. If flights from Lydd are displaced from other airports in the UK, the result should be a reduction in CO₂ emissions;

⁴¹ **CD5.38** Foreword

⁴² see also **LAA/4/L** paras 3-7

⁴³ **CD8.7**

⁴⁴ **LAA/11/A**

- If flights from Lydd are not “displaced” from other airports, the Climate Change Commission has concluded that the UK can still meet its climate change obligations with a 60% growth in air transport movements.⁴⁵ The expansion of Lydd would account for only a very small fraction of that growth.
26. Accordingly, these applications should be considered consistent with national aviation policy.

The draft NPPF

27. The draft NPPF is a material consideration, but is currently only a consultation draft. As such, if the Secretary of State’s decision were to be taken today it is not a matter on which significant weight could be placed. However, things will almost certainly have moved on by the time the Secretary of State comes to consider this. Since we do not know when this will be, weight is a matter we can only leave to the Secretary of State to determine in accordance with the usual principles.
28. As to substantive relevance, we note and agree with LAA’s submissions,⁴⁶ in particular with regard to what the NPPF has to say about the government’s commitment to encouraging rather than impeding growth, the need for planning to proactively drive and support the development the country needs, and the importance of this for the social and economic success of the country. This is precisely the point which SDC has made with regard to the economic benefits of LAA’s proposals (to which we return below).

⁴⁵ see LAA/11/A para 3.12

⁴⁶ LAA/14/F section 4

The 1992 Secretary of State's decision

29. Finally, in terms of compliance with both policy and the legislative tests, it is relevant that, in 1992, the Secretary of State considered and rejected many of the objections which have been presented to this Inquiry.

30. In saying this, SDC recognises that 19 years is a long time, and that many things have changed in the intervening period. The weight to be attached to the 1992 decision may be reduced according to whether either the applicable policies or the situation on the ground have changed. Where things have not changed, or where broadly similar issues arise, it remains relevant that these matters have been looked at before, and considered in depth. It follows that the relevance of the 1992 decision letter is not a question to which there is a single answer: it is a matter that can only be assessed on a topic-by-topic basis. Consequently, we will refer to the 1992 decision as appropriate in our submissions on particular issues below. For the moment, we merely say that the decision is, on any analysis, a material consideration.

IMPACT ON ECOLOGY: CALL-IN ISSUE (C)

31. Throughout the history of these applications, SDC has regarded the possible impact of the proposals on ecology, and in particular on the internationally designated sites and the SSSI, as one of the most important issue to be addressed before permission can be granted. In part, this simply a reflection of Policy TR15. In part, it is a recognition of the stringency of the protection afforded by statute to the SAC and the SPA., and the fact that Natural England and the RSPB have objected to the proposals.

32. Accordingly (as we observed in opening), over the four years since the applications were made,⁴⁷ LAA's proposals have been given careful and detailed consideration by SDC's officers and elected members. Throughout that process, the Council has been fully cognisant of the sensitivity of the site, given its proximity to the designated Dungeness SAC, the Dungeness to Pett Level SPA and the Romney Marsh and Rye Bay SSSI, and has engaged Bureau Veritas as independent experts to provide guidance on these issues.
33. In some of the evidence that has been produced to this Inquiry, Council members have been criticised for disagreeing with Natural England, the RSPB, and for rejecting parts of advice from Bureau Veritas. In our submission, however, as the evidence to this Inquiry has turned out - and especially in the light of the matters which are now common ground between LAA, Natural England and KWT - members would be entitled to feel entirely vindicated in their decision.
34. In particular, Natural England now accepts that *all* its previous concerns about possible adverse effects on the integrity of the SAC can be addressed through the imposition of agreed conditions and/or by mitigation measures which would be secured by the s.106 agreement.⁴⁸ Similarly, Natural England now accepts that all its concerns about impacts on the SSSI can be addressed. Indeed, as Ms Dear explained, in its negotiations with LAA Natural England has applied its normal practice of seeking to gain positive benefits from the mitigation package, and believes it has achieved this.⁴⁹ Notwithstanding Ms Dear's initial⁵⁰ reluctance to accept this, there can therefore be little argument that the mitigation measures now proposed by LAA, such as the creation and maintenance of an additional 500m of ditches, would in fact *enhance* the existing habitats.

⁴⁷ in December 2006

⁴⁸ As will be apparent from NE's original proofs of evidence to this Inquiry, LAAG's assertion (LAAG Closing paras 64-65) that impacts on the SSSI and SAC were no longer in issue by the time of the Committee meeting is simply wrong.

⁴⁹ Dear in response to question from the Inspector, Day 23 pm

⁵⁰ In xx by LAA, Day 23, Ms Dear eventually conceded that the proposed new ditches would be an improvement both in quantity and in quality.

35. Consequently, from what was previously an extremely wide-ranging objection based on a host of ecological interests, the disagreement between the RSPB, Natural England and LAA has essentially been reduced to a single issue: the impact of the proposals on birds, and in particular on the integrity of the SPA and the pRamsar site.⁵¹
36. Self-evidently, this level of agreement between the parties does not absolve the Secretary of State of his responsibilities under either the Habitats Directive or the guidance in PPS9. However, in areas where there is now common ground, we do not propose to take up Inquiry time with detailed submissions. Accordingly:

(1) In relation to the SAC, we merely:

- refer the Secretary of State to the evidence of Dr Tuckett-Jones⁵² and Dr McLellan⁵³ Statements of Common ground between LAA and NE relating to air quality,⁵⁴ great crested newts⁵⁵ and ditch mitigation and aquatic invertebrates⁵⁶; and between LAA and KWT relating to air quality,⁵⁷ and
- invite him to conclude either:
 - a. that if the proposed mitigation measures are taken into account, there is not likely to be any significant effect on the SAC; or

⁵¹ NE's position as confirmed by Dear xx by LAA, Day 23 pm

⁵² LAA/8/A , dealing with air quality in general and nitrogen deposition in particular

⁵³ LAA/9/A and D, dealing with ecology

⁵⁴ CD4.2, CD4.9

⁵⁵ CD4.11

⁵⁶ CD4.12

⁵⁷ CD4.10

- b. that the proposals will not have any adverse effect on the integrity of the SAC, and to make an appropriate assessment to that effect.

(2) In relation to the SSSI, we:

- again refer the Secretary of State to the Statements of Common Ground (as above);
- invite him to conclude that the applications would not substantially damage the interest features of the SSSI or have any significant effects on any protected species.

(3) In relation to wider biodiversity issues, we:

- refer to Statements of Common Ground between LAA and KWT covering airfield biodiversity⁵⁸ and lighting impacts on moths⁵⁹;
- invite the Secretary of State to conclude that there is no basis for refusing permission for either of the applications before him.

37. Turning to the possible impacts on birds, and the integrity of the SPA (either as it is now, or as it is proposed to be), we make two preliminary points:

- (1) Assuming the Secretary of State considers it necessary to make an appropriate assessment, the test to be applied is whether the proposals are likely to have a significant adverse effect *on the integrity of the site(s) as a whole*, i.e. on⁶⁰

⁵⁸ CD4.13

⁵⁹ CD4.14

⁶⁰ Circular 6/2005, para 20

“the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified.”

This should not be confused with whether the proposals might have an impact on individual birds. Disturbances, or even deaths, which do not impact on a species at population level do not bring a proposal into conflict with the Regulations;

- (2) It is significant that neither Natural England nor RSPB positively asserts that LAA’s proposals *would* cause material harm to the integrity of the SPA.⁶¹ Rather, their case is that it is not satisfied that the proposals will not cause such harm.⁶² While that is a legitimate position in terms of the burden of proof under the Habitats Regulations, it is necessarily a weaker complaint than an objection based on a claim of positive harm. In saying this, SDC acknowledges the stringency of the test under the Habitats Regulations, but submits that this should not become an excuse for objectors to hide behind the mantra that *they* don’t have to prove anything, because it is for LAA to prove that there will be *no* harm. It is notoriously difficult to prove a negative, and the test under the Habitats Regulations is not to be equated with a test of absolute certainty. An objector wishing to complain that the test is not met must at least be able to point to a credible scientific basis on which harm to the integrity of the site might be caused.

38. Translating this to the possible causes of harm at Lydd, NE and RSPB’s original concerns can be broken down under 3 broad headings:

- (1) Risk of birdstrike;
- (2) Noise and visual disturbance;

⁶¹ Dear xx by LAA, Day 23 pm

⁶² Day xx by LAA, 8th Sept 2011

- (3) Effects of bird hazard management.

We deal with each in turn.

Risk of Birdstrike

39. Although initially a point of concern to NE/RSPB, it is now common ground that it would be possible for LAA to manage the risk of birdstrike to an acceptable level.⁶³ To this extent, neither the RSPB nor NE any longer has concerns about the safety aspects of the appeal proposals, or the mortality rates for birds as a result of bird-strike.⁶⁴ The objectors' case now relates to the possible effects of increased flights in terms of disturbance; and impact of the measures which would be employed by the Airport in order to manage the risk.

Noise and Visual Disturbance

40. This is an issue which was considered in some detail by the Secretary of State in 1992. We make the following points about the evidence presented to that Inquiry:

(1) Range of birds and scope of RSPB objection

- The range of birds breeding, feeding and wintering in the area was remarkably similar to (and in some respects more extensive than) to those which can be found there today;⁶⁵

⁶³ See SoCG on Birdstrike, **CD4.5**; Day xx by LAA Day 8 pm

⁶⁴ **CD4.5** para 1.2(b)

⁶⁵ **CD8.27(d)** paras 3.49-3.50 list Sandwich, Common and Roseate Terns; Mediterranean, Common and Black-Headed Gulls; Gadwall; Pochard; Bebbick's Swan; Smew; Widgeon; Scaup; Shoveller; Tufted Duck; Smew; Bar-tailed Godwit; Sanderling; Oystercatcher; Greenshank and Ruff.

- Notwithstanding the wide range of birds then using the reserve, the RSPB's objection was centred on the potential effects on Sandwich and Common Terns.⁶⁶ That stands in stark contrast to the RSPB's much more scattergun approach at this Inquiry. It is difficult to see why species about which the RSPB was not concerned in 1988 (when they had actual experience of frequent noisy movements) should now suddenly be at risk. Neither Dr Day nor any other witness for the RSPB has provided any explanation for this change in position.

(2) Existing Situation and Tolerance of Birds to It

- In the years prior to the Inquiry, there had been up to 60,000 flights p.a., including flights by aircraft⁶⁷ that would have been significantly noisier⁶⁸ than anything which might fly from Lydd if the current applications are allowed;
- Notwithstanding the fact that these much noisier aircraft were directly flying directly over them, areas of the reserve such as Borrowes pit had been used by terns for nesting and roosting.⁶⁹ Indeed, the Secretary of State concluded that, as “the most important and vulnerable birds colonising the site, terns had bred successfully at this location since 1978, and that there was no correlation between variations in breeding success and variations in the number of aircraft movements.”⁷⁰

⁶⁶ CD8.27 para 5.25

⁶⁷ CD8.27(d) para 3.4

⁶⁸ LAA/5/G

⁶⁹ CD8.27(d) para 5.26

⁷⁰ CD8.27(a) para 15

(3) Estimated Noise Levels and Effect on Bird Population

- It was estimated that the effect of the application would be to expose the birds to maximum noise levels of 90-99 dBA. This would occur up to 20 times a day, with a maximum of 3 peaks in any hour.⁷¹
- Notwithstanding these predicted effects, the Secretary of State was satisfied that there would not be significantly detrimental effects on the birds.

41. We do not suggest that RSPB and NE's objection to day should be dismissed simply because a similar (but more focused) objection was dismissed in 1992, but at the very least, we suggest that the Secretary of State needs to ask "what is it that has changed since 1992? What new evidence is there which would justify coming to a different conclusion?"

42. This is entirely consistent with the view which Natural England (then English Nature) itself took in 1997, when consideration was being given to renewal of the 1992 runway permission. At that time, English Nature's position – having discussed the matter with RSPB - was that it was "not aware of any further evidence regarding the impact of aircraft on birds" and would therefore probably not object on these grounds.⁷² It is therefore surprising that neither NE's nor RSPB's submissions to this Inquiry identify any advance in knowledge since 1997, nor even seem to realise that this is a question which needs to be answered: Dr Day had not even studied the 1992 decision to see what evidence had then been presented, or what conclusions the Secretary of State reached upon it.⁷³

⁷¹ CD8.27(d) para 3.52

⁷² see CD12.39

⁷³ Day xx by LAA, 8/9/11 pm

43. In SDC's submission, this is a telling omission, not least because Dr Day candidly accepts that he has no personal or practical experience of assessing the impacts of aviation on birds, and has not visited any other airport in preparation for this Inquiry. Rather, he has "come to the subject via the literature".⁷⁴ In this regard, however, it is difficult to see that things have moved on very much since 1992, when (to use the RSPB's own words) there was "very little published information" and evidence about Sandwich terns was "particularly scant".⁷⁵ Looking at the post-1992 publications which have been produced in evidence, the most that can be said is that there are various papers which indicate that there can be disturbance *effects* when birds and aircraft are found together. However, that does not take the matter any further forward, since it is common ground that disturbance *effects* do not necessarily lead to disturbance *impacts* on the overall bird population.
44. At this Inquiry, RSPB has been at pains to point out that there is no academic paper which demonstrates an *absence* of disturbance impacts, but the converse is also the case - neither is there any academic paper which demonstrates that aviation *does* produce disturbance impacts on any of the species of concern at Dungeness. That is important, for the reasons we have outlined above: it is not enough for NE/RSPB simply to say "LAA hasn't proved its case". It is implicit in the *Waddenzee* formulation that objections to development in or adjacent to European sites have to be founded on *reasonable* science.
45. In the absence of prior studies or academic papers which provide an answer, there is, in our submission, no substitute for practical experience. In this regard, Dr Day's track record stands in contrast to that of Mr Deacon and Dr Armstrong, whose experience includes not only (in the case of Dr Armstrong) the creation bird reserves for species of precisely the sort found at Lydd, but also advising airports such as Aberdeen, Edinburgh, Newcastle, Doncaster-Finchingly, Coventry,

⁷⁴ Day xx by LAA, Day 8 pm

⁷⁵ see **CD8.27(d)**, para 3.53 -3.58 (LAG submission); para 5.30 (NCC/RSPB submission)

Birmingham, Carlisle and Belfast.⁷⁶ Significantly, 3 of those⁷⁷ have involved issues with SPAs. Both Dr Armstrong and Mr Deacon are adamant that there is no inherent conflict between birds and busy airports.

46. Not all of this is contradicted by Dr Day, who accepts (for example) that lapwings are tolerant to noise;⁷⁸ that golden plover are tolerant of the existing operations at the airport, including business jets; and that gulls will readily habituate.⁷⁹ In relation to other species about which Dr Day is more equivocal,⁸⁰ the evidence of LAA's witnesses is supported by much of the RSPB's own experience at Dungeness:

- (1) Despite the existing use of the airport by jets, there is no record of the RSPB having made any complaint to the Airport about noise or disturbance from either the aircraft themselves, or the birdscaring techniques which the Airport has used;⁸¹
- (2) On his visits to the airport (which lasted for periods of 2 and 3 days respectively) Dr Day observed no disturbance effects on the surrounding bird population;⁸²
- (3) Mr Gomes evidence of existing movements by jets and turboprops was to the same effect.⁸³ The only concern which Mr Gomes has expressed about noise from jet movements relates to a single experience of an *existing* jet operation. His proof made no similar observations about the demonstration take off and landing of a Boeing 737, which he also witnessed. In his oral evidence, he

⁷⁶ Armstrong re-x Day 6 am

⁷⁷ Carlisle, Belfast City and Doncaster-Finningly

⁷⁸ Day, response to Inspector's question Day 8 pm

⁷⁹ Day xx by LAA 8 Sept. 2011

⁸⁰ i.e. Dr Day does not say that they will not habituate

⁸¹ Day xx by LAA, Day 8 pm; Gomes xx by LAA Day 10 am

⁸² Day xx by LAA Day 8 pm

⁸³ Gomes in chief, Day 9 pm

indicated that did not witness any disturbance effect on birds as a result of the trial;⁸⁴

- (4) Mrs Dear confirmed that the Airport was not currently having “deleterious effects” on the SPA.⁸⁵

47. RSPB’s explanation for this lack of impact is that it is due to the current level of operations at Lydd, and in particular the relatively low number of jet movements. There are two reasons why this cannot be correct:

- (1) It overlooks the fact that the previous tern population at Lydd *established* itself at Borrowes Pit in 1978, when activity at the airport was at its peak.⁸⁶ This is impossible to reconcile with Dr Day’s concerns that, having now left the immediate vicinity of the airport (for reasons unrelated to aircraft activity) the terns might be put off from recolonising it if the current applications are approved;
- (2) This is an area where RSPB seeks to have its cake and eat it too. When cross-examining Dr Armstrong about the Berger paper (which deals with movements at [REF]) Mr Forsdick suggested that the reason why gulls in that case were found literally at the end of the runway was because they had become habituated to the aircraft at this busy international airport. Mr Forsdick asked whether Dr Armstrong had any evidence of birds habituating at the lower level of movements proposed by Lydd. The inconsistency of this line of cross-examination and the RSPB’s main argument that more aircraft means more disturbance is obvious:

⁸⁴ Gomes in chief, Day 9 pm, confirmed in xx by LAA Day 10 am

⁸⁵ Dear xx by LAA, Day 23 pm; confirmed by NE in Closing para 21dc4

⁸⁶ ATMs peaked at around 60,000 movements in 1979: see **CD8.27(d)** para 3.4. The tern colony was still in existence at the time of the 1988 Inquiry

- If birds are more likely to habituate to aircraft given sufficient exposure to aircraft, then increasing the number and regularity of flights (as would happen if LAA's applications are approved) should reduce rather than decrease disturbance;
 - If birds do not habituate to infrequent or irregular flights, then the even smaller numbers of jet aircraft which currently use Lydd should already be disturbing the birds. As noted above, there is no evidence that they are.
48. On this basis, we invite the Secretary of State to conclude that there is no inherent conflict between the bird populations and aircraft at Lydd, because the two can co-exist.
49. However, even if the Secretary of State is not entirely convinced of this, that is not the end of the story: it then becomes necessary to consider precisely what the impact might be. This is an issue on which we leave it to LAA to make detailed submissions, but **CD4.17** identifies the relationship between the areas of habitat which are of concern to RSPB and the noise contour lines for southern departures, from which it will be apparent that – even if there were an impact – it would be on an extremely small area, in circumstances where there is ample room within the wider reserve for birds to take refuge. In the circumstances, it is difficult to see how increased movements from the Airport could have any significant effect on the ability of Dungeness to “sustain the habitat, complex of habitats ... or the levels of populations of the species for which it was classified.”

Bird Hazard Management

50. In terms of the effects of bird hazard management, we start from the point that LAA is an existing Airport, which has existing obligations to manage the risk of

birdstrike, no matter what the number of aircraft that are using it. As Dr Armstrong pointed out, the airport is already operating scheduled flights, and as such bird control should be at the highest possible level already.⁸⁷ On behalf of the RSPB, Dr Allan recognised that the airport should already be seeking to “get the risk [of birdstrike] as low as reasonably practical”.⁸⁸ In that context (and consistent with the evidence of Mr Deacon) Dr Allan accepts that:

(1) In terms of on-airfield management action, there is nothing which would need to be done if permission were granted which Mr Deacon is not already recommending should happen now.⁸⁹ In particular:

- Dr Allan recognises that grass management and some scrub clearance is already taking place on the airfield, and that further clearance (including the ditches) is desirable.⁹⁰ In this regard, Dr Allan agrees that the need for habitat management on the airfield would be the same whether there was one flight per day or 100;⁹¹
- although it is not yet in place, Dr Allan agrees that it has been a requirement on LAA to net the ponds and watercourses on the airfield wherever reasonably practicable since July/August 2010, and that this is something which the Airport should be doing now;⁹²
- the operation of a buffer (for which the use of audio and pyrotechnics is the best option) is good practice, which the airport should be following now;⁹³

⁸⁷ Armstrong-in-chief Day 4 pm

⁸⁸ Allan xx by LAA Day 6 pm

⁸⁹ Allan x by LAA Day 7 pm

⁹⁰ **CD4.5** para 4.2.2; Allan xx by LAA Day 7 am

⁹¹ Allan xx by LAA, Day 7 am

⁹² **CD4.5** para 4.2.6; Allan xx by LAA Day 7 am, confirming Deacon in chief, Day 2; Deacon xx by NE on Day 2

⁹³ Allan xx by LAA, Day 7 am

(2) in terms of off-airfield measures:

- there is no reason why these should be a concern. As Mr Allan made clear, his conclusion that LAA can manage the birdstrike risk adequately was reached without making *any* assumptions about agreements with local land-owners for off-site management – indeed, as he explained, this was the only way in which it was possible to consider the matter, because it would be inappropriate to rely on measures which LAA did not have the power to enforce (e.g. because they do not own the land);⁹⁴
- in any event, Dr Allan⁹⁵ and Mr Deacon⁹⁶ agree that the Airport should be already be seeking to disrupt flight lines across the airport by taking action at either the source or destination points;
- under the terms of the s. 106 agreement, any off-site measures would have to be approved as part of the BCMP. In this regard, SDC does not understand NE and RSPB’s argument that the Secretary of State cannot grant permission for these applications because the s.106 requires prior approval of the BCMP. This point might have some force if the approval process involved starting from a blank piece of paper, but that is not the case: the BCMP is to be in substantial accordance with that put forward by Mr Deacon in evidence. The Secretary of State can therefore see and assess what the effects of that plan would be. In terms of future changes, these would require SDC’s approval following consultation with NE and the RSPB (as part of the BCMP Panel).

⁹⁴ It is clear from NE’s closing (paras 125-127) that there is a dispute over exactly what Dr Allan said. SDC can only ask the Inspector to check his own note of Dr Allan’s xx by LAA.

⁹⁵ **CD4.5** para 4.2.4

⁹⁶ Deacon xx by RSPB Day 3 pm

It is inconceivable that NE/RSPB would support changes which were likely to have a significant effect on the integrity of the SPA, and even if LAA were bold enough to suggest such changes in the face of the BCMP Panel's recommendations, SDC could not approve them unless LAA was able to demonstrate IROPI.

51. It may be that LAA is not yet doing all these things, but it is clear that the current owners have already embarked on a programme of improvements at the Airport which are designed to bring existing practices into line with what is required. Hence (as noted above) grass management and scrub clearance is already taking place; the responsibility for bird-runs has been shifted from the fire service to a dedicated, full time bird control manager; and LAA has been taking professional advice on the other measures which are needed.

52. This is important, because if these are measures which the Airport is or should already be taking, the fact that they would also be necessary if planning permission is granted is neither here nor there. In that light, the key differences between Mr Deacon and Dr Allan seem to boil down to two points:
 - (1) The frequency with which LAA should be operating bird-runs at current levels of activity. Mr Deacon's evidence on this is very clear: the Airport should be operating according to best practice, and best practice is to operate "bird runs" continuously, so as to discourage birds from settling on the airfield and to maintain an appropriate buffer. This is what the airport should be doing now,⁹⁷ and it is why the Airport now employs a full-time bird-control manager. In contrast, while he accepted that it would be beneficial to push back the buffer zone now,⁹⁸ Dr Allan suggested that it was not necessary to do more than carry out a bird-run 15 minutes before each *vulnerable* flight,

⁹⁷ Deacon re-x Day 4

⁹⁸ Allan xx by LAA Day 7 pm

which he understood to be only 1 aircraft every 2 days.⁹⁹ In this regard, however, Dr Allan’s evidence is at odds with the practices recommended by the International Birdstrike Committee,¹⁰⁰ which Dr Allan himself drafted.¹⁰¹ Standard 3 of the Recommended Practices clearly states that (emphasis added):

“A properly trained and equipped bird/wildlife controller should be present on the airfield for at least 15 minutes prior to *any* aircraft departure or arrival. Thus, if aircraft are landing or taking off at intervals of less than 15 minutes there should be a continuous presence on the airfield throughout daylight hours.”

(2) Safeguarding. Dr Allan agrees that safeguarding is an “essential component of the Airport Safety Management System”¹⁰² and that the Airport should have a safeguarding policy as matters stand,¹⁰³ but appears to believe that any policy would be pursued more vigorously if permission is granted. However, while this is clearly a matter of dispute between LAA and RSPB/NE (on which we leave it to LAA to make any necessary submissions), it is not a matter which needs to trouble the Secretary of State. As Dr Day accepted in cross-examination:¹⁰⁴

- the test under the Habitats Regulations has to be applied by reference to the integrity and coherence of the SPA as it exists today;
- the purpose of safeguarding is to allow LAA to object to development that has yet to take place;
- future proposals by RSPB and/or Natural England to make changes to the SPA or the surrounding area (for example, through the future restoration of gravel pits that are currently still

⁹⁹ Allan xx by LAA Day 7 pm

¹⁰⁰ **CD12.33**

¹⁰¹ Allan xx by LAA Day 6 pm

¹⁰² **CD4.5** para 5.1.1

¹⁰³ Allan xx by LAA, Day 6 pm

¹⁰⁴ Day, xx by SDC Day 9

being worked) would (if they could be achieved) constitute *enhancements* of the existing SPA;

- the fact that the safeguarding policy might (if LAA’s objections prevailed) prevent future *enhancement* of the SPA does not and cannot affect the integrity of the SPA as it stands.
- As the Bird Control SoCG¹⁰⁵ puts it,

“changes to current permissions and site management agreements cannot be imposed retrospectively, and therefore cannot adversely affect the current status of the Designated Sites and RSPB reserve.”

It follows that the safeguarding policy is not something which could place the applications in conflict with the Habitats Regulations.

53. Crucially, we draw the Secretary of State’s attention to the fact that all these conclusions flow *simply on the basis of the existing situation at the Airport*, without any reference to LAA’s fall-back position. Indeed, Mr Allan made it clear that the fallback position was not something which he had assessed in his evidence. Accordingly, we invite the Secretary of State to conclude that the bird control management measures which would be necessary to manage the risk of birdstrike if permission is granted could not have any effect on the integrity of the SPA, for the simple reason that they are no different to what the Airport is or should already be doing.
54. If the Secretary of State agrees with this, then it is irrelevant whether he also accepts Ms Congdon’s evidence about the likely fall back. This is the approach which the Council took when resolving to grant planning permission: SDC’s resolution was not premised on the existence of a fall-back. In the circumstances we are in general content to leave it to LAA to make submissions about what that fall-back might be. We merely note that:

¹⁰⁵ CD4.5 para 5.1.5

- (1) the current owners of the Airport have already expended significant sums of money on improving it, on which it would be surprising if they did not seek a return;
- (2) over the past 5 years, Lydd has bucked the national trend of a decline in air traffic movements.¹⁰⁶ In 2010, against a national decline of 3%, movements at Lydd increased by 16%. If the Airport is able to attract growth in a time of recession, there is no reason why it should not continue to do so as markets improve;¹⁰⁷
- (3) the interest which has been shown by the current night-cargo operation is a clear illustration of the way in which, without the need for any further consent, LAA could develop if permission is refused. In particular, there are no controls on night-flying at Lydd to prevent it. Although the cargo flights began as a temporary diversion from Southend, the operators are now interested in making it a permanent arrangement.¹⁰⁸ If the current applications are refused, this is precisely the sort of opportunity which LAA is likely to seek to exploit instead.
- (4) the Airport would similarly be a suitable place to train 737 pilots.¹⁰⁹ LAA has already been approached twice by a commercial training school with this in mind. Simply accommodating commercial training could add as many as 12,000 movements p.a. to current levels.¹¹⁰
- (5) if the fallback position as set out in Ms Congdon's proof were to occur, Dr Allan accepts that the bird strike management requirements would not be significantly different to those which would be needed for 500,000 ppa.¹¹¹

¹⁰⁶ Maskens re-x Day 12 pm; Congdon in chief Day 14 pm

¹⁰⁷ LAA/4/G para 2.13

¹⁰⁸ Maskens in chief, Day 11 am

¹⁰⁹ Maskens xx by CPRE Day 12 pm

¹¹⁰ Maskens re-x Day 12 pm

¹¹¹ Allan xx by LAA, Day 7 am

55. Contrary to NE/RSPB's submission, it is impossible to see how the incremental acceptance of business opportunities of this sort could be described as a "plan or project" for which LAA, as a statutory undertaker, would itself need to undertake an appropriate assessment. Consequently, while we do not consider it is necessary to reach a conclusion on the fallback in order to approve LAA's proposals, if the Secretary of State accepts LAA's evidence as to what the likely fallback is and concludes that this is a material consideration, there can be no doubt that the applications would pass the test in the Habitats Regulations.

OTHER OBJECTIONS: CALL IN ISSUES (A) AND (D)

56. In this section, we address concerns which have been raised by LAAG, CPRE and others. We begin by making the point that many of these relate to areas where there is a statutory consultee with specific responsibility for identifying grounds for concern, but that in none of these areas has the statutory consultee objected. That does not necessarily mean that the third parties are wrong, but in SDC's submission it calls for careful scrutiny of the evidence they have produced before concluding that they are right.

Air Quality

57. Air Quality has been raised at this Inquiry in three distinct respects:

- (1) The impact of the proposals on ecology, in particular with regard to nitrogen deposition;
- (2) Potential impacts on human health;

(3) The impact of the proposals on carbon emissions and climate change.

58. The first of these has already been addressed in our submissions above. The short point is that both Natural England and KWT now accept that any concerns they may have had about the impact of nitrogen deposition can be addressed by conditions and/or the s. 106 Agreement. In the circumstances, this is no longer an issue.

59. Concerns about the potential impacts on human health have been raised principally by CPRE,¹¹² but have been expressed in only the most general terms, unsupported by any technical evidence. No statutory consultee has objected to the proposal on these grounds, and the CPRE's evidence is addressed in the rebuttal proof of Dr Tuckett-Jones.¹¹³ In particular, Dr Tuckett-Jones states that:

“taking into consideration existing background pollutant levels, concentrations will be well below the standards set out in the UK's Air Quality Strategy for the protection of human health. As to impacts on residential properties on the approach roads to the Airport, namely the A259 and Romney Road, even at roadside locations, pollutant concentrations are predicted to remain well within the UK's air quality standard, whether or not the expansion of the Airport proceeds.”

60. We therefore invite the Secretary of State to accept Dr Tuckett-Jones' conclusion that:

“there will not be any material, let alone significant, impacts on the health of local residents as a result of the effects of air pollution following the expansion of the Airport.”

¹¹² see in particular the proofs of Cllrs Loseby and Joynes **CPRE/04/A**, **CPRE/08/A** and Mr Black **CPRE/10/A**

¹¹³ **LAA.8/D** section 2.3

61. In terms of the third issue (carbon emissions and climate change) it is necessary to distinguish ground operations from any effects which would be attributable to aircraft in flight. The latter are dealt with in our submissions above on the continuing relevance of the ATWP. The impact of Ground Operations is covered in detail in the evidence of Mr Coventry.¹¹⁴ The new terminal has been designed and would be constructed to meet a BREEAM rating which was only just short of “Excellent”; the closer proximity of Lydd to its catchment area offers significant savings in CO₂ emissions when compared with the journey to Gatwick; and emissions from aircraft engines while the planes are still on the ground should be lower than at more congested airports, where holding times are longer. In all these respects, the proposals are policy-compliant.
62. In summary, there is no reason why climate change or carbon emissions should prevent the grant of planning permission.

Alternative Sites: Manston

63. Both LAAG and CPRE have argued that there is no need for Lydd to expand, given the availability of what is said to be the more suitable alternative at Manston.
64. In SDC’s submission, this is a false dichotomy. It is a commonplace in planning law that applications for planning permission should be treated on their individual merits.¹¹⁵ If a particular proposal is acceptable in its own right, it is irrelevant that there are alternative sites on which it could have been provided. Consideration of alternatives is generally only relevant in cases where there is some fundamental planning objection to a proposal, and the developer is relying on an overriding need for the development to overcome that objection. That is not the present case.

¹¹⁴ LAA/11/A

¹¹⁵ The relevant legal principles are summarised in SDC’s separate Legal Submissions

65. From a policy perspective, SDC recognises that Policy T9 of the RSS explicitly supports an “enhanced role for Kent International Airport at Manston as an airport of regional significance”, but does not refer to Lydd. In that sense, we do not dispute that Manston could be described as “more important”. However, no-one has seriously suggested that Lydd would prejudice the development of Manston, and it is Ms Congdon’s evidence that the two have overlapping but otherwise distinct catchment areas¹¹⁶ and are complementary.¹¹⁷
66. Ms Congdon’s conclusions in this regard are entirely consistent with the RSS. As we have already observed, notwithstanding the specific mention of Manston in Policy T9, the RSS *also* encourages planning authorities to support the development of and facilitate growth at smaller airports such as Lydd which can play a valuable role in meeting local demand and contributing to regional economic development; while the 2003 White Paper recognises Lydd as a small airport, the growth of which should not be overlooked in helping to meet local demand.¹¹⁸ Both national and regional policy therefore make it clear that it is not a question of “either/or”. Mr Lloyd (CPRE) conceded as much.¹¹⁹
67. The only point at which the existence of Manston might become relevant is if the Secretary of State were to conclude that the current applications would significantly affect the integrity of the internationally designated sites. If that were the Secretary of State’s view, permission could only be granted if there were “imperative reasons of overriding public importance”. SDC acknowledges that the existence of Manston would make it difficult to satisfy this test. However, since neither LAA’s nor SDC’s case has ever been based on the existence of IROPI, this issue does not arise.

¹¹⁶ Congdon xx by LAAG Day 15 pm

¹¹⁷ see **LAA/4/A** paras 5.5, 5.9, 5.61

¹¹⁸ see **CD5.24** para 11.98

¹¹⁹ Lloyd xx by LAA, Day 33 pm

68. Accordingly, the existence of Manston should have no bearing on the outcome of these applications.

Flood Risk

69. The Environment Agency was consulted on the applications, and (subject to the imposition of appropriate conditions) had no objection. The only party presenting an objection based on flood risk is the CPRE. In particular, Mr Furey and Dr Meaden are concerned about the risk of sea level rise in the area.¹²⁰ However, the extent of their objection is now significantly reduced. In particular, it is now common ground¹²¹ that the Updated FRA prepared by WSP¹²² provides a PPS25-compliant evidence base for the Airport.
70. Rather, as became apparent from their amended proofs of evidence and cross-examination:
- (1) neither Mr Furey or Dr Meaden contends that development of the airport will increase the risk of flooding in the area, either by way of impedance or loss of flood storage.¹²³ Their concern arises from the fact that the Airport (which will attract large numbers of visitors) lies in an area which they consider will be at risk of flooding if sea levels rise;
 - (2) in this regard, CPRE argues that sea level rises may be greater than those set out in both UKCIP02 and UKCP09. To this extent, their objection is inconsistent with national policy, and would require an assessment of climate change impact which goes beyond the probability parameters set down in PPS25, which have been used by DEFRA and the Environment Agency in

¹²⁰ CPRE/7/A and CPRE/09/A

¹²¹ CD4.8 – Statement of Common Ground on Flooding

¹²² LAA/13/C

¹²³ Furey xx by LAA on Day 18

their own strategic planning; and by SDC in its Strategic Flood Risk Assessment;

- (3) The Environment Agency has reviewed the Updated FRA and does not object to the development proposals for the Airport. Their response advises that prevailing guidance from DCLG requires them to use UKCIP02 predictions, but none of the low, medium or high scenarios for sea level rise in UKCP09 are greater than UKCIP02 in any event;¹²⁴
- (4) Mr Furey and Dr Meaden both recognise that, if sea levels do rise, it will not only be the Airport which is at risk: significant parts of Greatstone and New Romney will also be under threat. As such they accept that, if their fears are correct, government will almost certainly have to intervene, by improving the flood defences.¹²⁵ If the flood defences are improved, the Airport will no longer be at risk. As Mr Furey was ultimately driven to concede, CPRE's objection in relation to flooding and public safety was a "non-point"¹²⁶;
- (5) CPRE's objection therefore boils down to a complaint that the Airport is not making any contribution towards the cost of improving the sea defences.¹²⁷ However:

- The Updated SFRA predicts that, even with an instantaneous breach at Lydd Ranges, flood levels at the Airport would only reach 3.25m, which would not affect either the runway or the terminal;¹²⁸
- Mr Furey accepts that, if flood levels were ever to rise to a point where they affect the terminal, the proposed terminal building

¹²⁴ LAA/13/D para 2.2.2; CD4.8 para 3.4

¹²⁵ CPRE/07/B para 4.1; xx Meaden by SDC on Day 18

¹²⁶ Furey xx by LAA on Day 18

¹²⁷ see CPRE/07/F para 1.20

¹²⁸ see LAA/13/A paras 5.2.11-5.2.16 and LAA/13/D para 2.9.5

would have sufficient capacity to accommodate people who might be caught up in the flooding event at first floor level;¹²⁹

- Leaving aside whether it would be appropriate to ask the Airport to contribute to improvements which will be needed in any event, the Environment Agency has not asked for any such contribution.
- In cross-examination, Mr Furey accepted that a contribution towards flood defences was “probably not” necessary in order to make the applications before this inquiry acceptable.¹³⁰

In the circumstances, SDC does not consider it is necessary or appropriate to require a contribution; nor does it believe that such a requirement would be “directly related to” the development, as required under r. 122 of the CIL Regulations.

71. We therefore invite the Secretary of State to reject the CPRE’s objections as they relate to flood risk.

Highways

72. We can deal with highways very shortly, not least because there is very little by way of a focussed objection to LAA’s proposals on these grounds.
73. The applications were accompanied by a full TA. Any concerns which were raised by any of the highway authorities involved have now been addressed, such that (subject to the appropriate conditions and the s. 106 agreement) there is no objection from any statutory body on highways grounds. The only technical

¹²⁹ Furey xx by LAA on Day 18

¹³⁰ Furey xx by LAA on Day 18

evidence on the issue before the Inquiry is that of Mr Sowerby,¹³¹ which demonstrates why there are no highways issues which ought to concern the Secretary of State.

74. LAAG's main concern, as expressed in cross-examination of Mr Sowerby, related to the possible use of the C24 through Camber. This is an issue which has been the subject of particular discussion with East Sussex CC. As Mr Sowerby explained,¹³² steps will be taken to discourage use of the C24, for example by removing existing signing and rerouting traffic along the A259. The s. 106 will ensure that the effectiveness of these measures is properly monitored, and if the expansion of the Airport results in a greater-than-expected impact on flows through Camber, appropriate traffic calming measures will be introduced.
75. In contrast, CPRE's criticisms on highway grounds relate not to any particular impact on the local highway network, but to what they describe as the relatively poor accessibility of Lydd, particularly in comparison with Manston. On this issue:
- (1) We refer back to our earlier submissions on the significance of Policy TR15. This policy was specifically drafted with the existing road network and Lydd's accessibility by public transport in mind, and provides specific support for the expansion of LAA. The scale of growth proposed in these applications is well within that anticipated by Policy TR15;
 - (2) We have already made the point that this Inquiry is not a "beauty contest" between Lydd and Manston. Whether or not Manston is more accessible is irrelevant;

¹³¹ LAA/12/A and C; LA/12/D

¹³² Sowerby xx by LAAG Day 30 am

- (3) Accessibility inevitably depends on the catchment area which a proposal is intended to serve. Lydd is well-related to the catchment area which Ms Congdon has used as the basis for her assessment;
- (4) The proposals are accompanied by measures, which will be secured by the s.106 Agreement, to improve accessibility by other means of transport, including employees wishing to walk or cycle from Lydd, and passengers wishing to travel by bus or use the rail service from Ashford. These measures will not eliminate the need for others to travel by car, but they are an appropriate and proportionate response to the need to make the expansion of Lydd as sustainable as possible.

76. Finally, CPRE are concerned about the adequacy of the car-parking proposed. The Secretary of State will readily understand that there is a balance to be struck here between ensuring that the provision made is adequate, and risking over-provision which may encourage even more people to travel by car. Mr Sowerby has explained the basis on which the proposed levels have been calculated, and the highway authority is satisfied with that analysis. Mr Knox-Johnston's scenario of 90% of a summer month peak of 25,000 passengers all arriving by car and leaving their vehicles for 14 days:

- (1) is improbable, in as much as the figures from other comparable airports do not show that proportion of cars being left for 14 days. Mr Sowerby's analysis has taken a more realistic mix;¹³³
- (2) overlooks the fact that not everyone arriving by car will want to leave their vehicle: Mr Sowerby's research indicates that only 42% will do this. The others will either be dropped off, or will arrive by taxi.¹³⁴

¹³³ Sowerby xx by CPRE, Day 30 am

¹³⁴ Sowerby xx by CPRE, Day 30 am

In the circumstances, there is no reason to believe that the levels of car-parking will not be sufficient.

Noise and Tranquillity

77. We deal with noise and tranquillity together because, although it is clear that “tranquillity” involves more than simply noise, there is a significant overlap between the two.
78. We begin by noting that noise was a significant issue at the inquiry into the previous application to expand Lydd, where objectors’ concerns were dismissed by the Secretary of State. Although not conclusive, this is in our submission relevant to the Secretary of State’s consideration of the issue today: it will be apparent from the Inspector’s own site visits that many (if not most) of the properties which are likely to be affected today were in existence in 1992; the 1992 permission contemplated a significantly higher cap on the number of aircraft; and engine technology has improved significantly in the 20 years since the last inquiry, leading. None of these factors suggests that the Secretary of State should come to a conclusion today which differs from that which he reached in 1992.
79. In the present case, LAA’s proposals have been the subject of detailed assessment in the ES, as updated in the evidence of Mr Perkins.¹³⁵ Mr Perkins has assessed the applications by reference to national guidance as set out in PPG24 and the Future of Aviation White Paper, and has concluded that, with appropriate mitigation and conditions:
- (1) With the runway extension, the majority of properties assessed would experience negligible or slight noise increases, with only a minority experiencing moderate noise increases. No properties would be exposed to

¹³⁵ LAA/5/A

annual or summer averages above 57 dB(A) (being the onset of community annoyance);

- (2) With the terminal building, these numbers increase slightly, but only one property in the annual average and three properties in the summer average would fall within the 57dB(A) contour.

These conclusions have not been challenged by any technical evidence presented to the Inquiry, and we invite the Secretary of State to accept them.

80. In assessing the significance of Mr Perkin's conclusions, SDC recognises (as it did when the matter was reported to Committee) that many properties around the Airport currently enjoy relatively low background levels of noise, and that while the applications may not cause these levels to rise above the thresholds recognised by national guidance, for some local residents the change will be perceptible. For this reason, the Council considers that, in subjective terms, the noise effects of the proposals are likely to be a little more significant than Mr Perkins suggests. However, notwithstanding that difference, SDC agrees with Mr Perkins that the number of people who would be affected is low, and in the circumstances that this is not a reason for refusal.
81. In its cross-examination of Mr Ellames, CPRE have suggested that this conclusion is a U-turn on the advice which Mr Ellames gave to members in his Committee Report. In particular, Mr Knox-Johnston suggests that it is inconsistent with Mr Ellames' suggested reason for refusal 2(d), that the proposals conflicted with Policy SD1 *inter alia* because of the noise effects. Mr Knox-Johnston contends that Mr Ellames could not have advanced this as a reason for refusal unless he believed that the noise impacts alone outweighed the benefits of the scheme, and were therefore a reason for refusal in themselves.

82. This argument misunderstands the clear structure of both Policy SD1 and the reasons for refusal. It also ignores the explicit wording of the Officers Report:

(1) As to the structure of Policy SD1, proposals are expected to “respect” the considerations listed at (a) to (k). However, it is only where there is “significant conflict” with those considerations that the harm needs to be balanced against other considerations such as overriding economic or social need. As Mr Ellames explained, the noise effects of LAA’s proposals did not, on their own, “significantly” conflict with the SD1 criteria so as to require a balancing exercise to be undertaken. It was only when they were added to the (far weightier) ecological objections that any need to balance harm against benefits arose;

(2) This structured approach to Policy SD1 was reflected in Mr Ellames’ draft reasons for refusal. Hence

- Draft Reason 2(d) referred to “adverse noise effects” contrary to Policy SD1(c), (d) and (k), but made no mention of any balancing exercise;
- The balancing exercise was carried out in Draft Reason 2(e), in the context not only of the impact on the local community, but also of the impacts on the SPA, SSSI, pSPA and pRamsar site. Reason 2(e) makes it clear that it was the combined harm which Mr Ellames considered was not outweighed, not that attributable to noise on its own.

(3) This is precisely what the Officers’ Report itself advised: paras 7.49, 7.59 and 9.8 of the main report,¹³⁶ and para 9.2 of the Supplementary Report¹³⁷

¹³⁶ CD1.48

¹³⁷ CD1.51

explicitly state that noise and tranquillity on their own were not a sufficient reason for refusal.

83. Mr Ellames' approach is reinforced by Mr McGrath for LAA. As Mr McGrath observed in cross-examination,¹³⁸ whether or not factors such as the economic benefits of the scheme could outweigh factors (a) to (k) in Policy SD1 depends on the factor concerned. Like Mr Ellames, Mr McGrath accepts that, if the Secretary of State concludes that the proposals conflict with the integrity of the internationally designated sites, LAA would "struggle to show that there is an overriding need" - but in the case of potential conflicts on local residents, the overall benefits "could well be overriding".¹³⁹ That has consistently been Mr Ellames'¹⁴⁰ and SDC's analysis of the policy throughout the history of this application.
84. CPRE has raised specific concerns about the impact of the proposals on the Greatstone School. Again, this issue is dealt with by Mr Perkins.¹⁴¹ Even on the Higher Growth Annual Average scenario, predicted noise levels at the school will be significantly below the 55dB(A) and 35dBLAeq levels which are recommended for the outdoor and indoor areas of a school, respectively. CPRE's concerns that existing sound-proofing at the school is inadequate would be addressed through LAA's offer, secured by the s.106 agreement, to contribute towards additional measures. Mr Perkins analysis, and the offer set out in the s. 106 agreement have been considered by both Bureau Veritas and SDC's Environmental Health Officers and are considered acceptable.
85. Issues of tranquillity are much harder to ascribe weight to. In the first place, while it is possible to find reference to tranquillity in the text of documents such as the

¹³⁸ McGrath xx by CPRE, Day 31 pm

¹³⁹ McGrath in answer to Inspector's question, Day 31 pm

¹⁴⁰ Ellames xx by CPRE, Day 32 am

¹⁴¹ LAA/5/D paras 2.3.2-2.3.3

South East Plan¹⁴² and the Rural White Paper, it is not something a concept which has yet found its way into any of the applicable *policies* of the development plan. This may well be because there is, as yet, no established methodology for measuring “tranquillity” and the impacts of a proposal on it. Secondly, while the CPRE is developing its “tranquillity mapping”, the methodology is still at such an early stage that in our submission, the results it throws out are far too crude to be of any use. As became apparent in the cross-examination of Mr Willis:

- (1) Although the concept of “tranquillity” includes matters such as visual intrusion, the methodology is unable to take account of less frequent forms of development, such as a Nuclear Power Station or smaller airports such as Lydd. Consequently, the tranquillity assessment for Dungeness simply ignores the existence of the power station and the airport, with the result that the site of the NPS is shown as the most tranquil part of the area.¹⁴³ The map is also blind to gravel extraction and the security fencing around the Lydd Ranges;¹⁴⁴
- (2) In assessing the impact of the airport on the surrounding area, no allowance is made for the effects of either the dispersal of aircraft in different directions or the reduction in noise levels which will inevitably occur as a function of increased altitude. Hence, the “impact” of LAA is assessed to be the same at a single point on the boundary of the AONB as it would be on the boundary of the airfield at the end of the runway, notwithstanding the fact that the latter will experience far more aircraft at a much lower altitude;¹⁴⁵

¹⁴² see e.g. para 11.2

¹⁴³ Willis xx by LAA, Day 24 pm

¹⁴⁴ Willis xx by LAA, Day 25 am

¹⁴⁵ Willis xx by SDC, Day 25 am

(3) The tranquillity map has not yet been developed to a point where it can be used at a localised level. It should not be used without a local assessment, which Mr Willis has not done.¹⁴⁶

86. Even if one sets these criticisms aside, it is difficult to see where tranquillity mapping gets the CPRE. On Mr Willis' own evidence, if the effect of the applications was factored in the result would be a reduction in 3 tranquillity points¹⁴⁷ on a scale which ranges from -140 to +148.¹⁴⁸ Even with such a reduction, Lydd would continue to enjoy a tranquillity score which was on par with National Parks and Areas of Outstanding Natural Beauty.¹⁴⁹

Nuclear Safety

87. Possibly more than anything else, it is the issue of nuclear safety which has captured the public interest in this Inquiry. In simplistic terms, the reasons for that are easy to understand: no-one doubts that, *if* an aeroplane were to crash into the Nuclear Power Station, the consequences *might* be catastrophic. Inflammatory slogans such as LAAG's "60 seconds to disaster" have no doubt also played their part. The Secretary of State will, we trust, view the subject in a more dispassionate light: there needs to be a calm and rational assessment of the chances of such a catastrophe happening, and the extent to which the grant of permission would increase that risk.

88. Having essentially been little more than an interested bystander in the debate between LAA and LAAG, SDC does not propose to make *detailed* submissions on the pages of evidence which have been produced on this topic. We limit ourselves to the following basic points:

¹⁴⁶ Willis xx by LAA, Day 24 pm

¹⁴⁷ Willis xx by LAA, Day 24 pm

¹⁴⁸ CPRE/2/A App 1 para 4.4.3

¹⁴⁹ see typical figures given at CPRE/2/A para 4.3

- (1) In 1992, the Secretary of State considered and rejected similar arguments about the impact of airport expansion on the Dungeness NPS. That is significant
 - Because the current application proposes a lower cap on flights than that which was imposed by the Secretary of State in 1992
 - Because aircraft safety has improved in the intervening period
- (2) These applications were considered by the HSE/NII, who raised no objection to them;
- (3) The core of LAAG's case on nuclear safety, as advanced by Ms Auty and Dr Pitfield, is an open attack on the methodology used by the HSE/NII to assess risk. Similarly, Mr Large's approach is not the one currently adopted by the regulator or the planning system in this country.¹⁵⁰ However:
 - The Byrne methodology is the standard basis for assessing risk.¹⁵¹ In SDC's submission, this Inquiry is not the appropriate forum to pursue that argument;
 - Ms Auty's and Dr Pitfield's concerns have all been set out in correspondence between LAAG and the HSE/NII, and all of the information aired by Mr Large is known to the NII.¹⁵² The NII is therefore fully aware of the points which LAAG has raised but remains satisfied that it is appropriate to use the Byrne methodology;
 - LAAG does not put forward any alternative methodology which could be used to assess the risk;¹⁵³

¹⁵⁰ Large xx by LAA, Day 28 am

¹⁵¹ Pitfield xx by LAA Day 29 pm

¹⁵² Large xx by LAA, Day 28 am

¹⁵³ Pitfield xx by LAA Day 29 pm

- Even if one modifies the Byrne methodology in the way that Dr Pitfield suggests, so as to take account the points of particular concern to LAAG, the results are still well below the tolerance threshold;¹⁵⁴
 - The risks to which Mr Large refers are not specific to Lydd Airport: they arise because whenever aircraft overfly nuclear power stations. Consequently – as he accepted - the logical extension of his argument is that nuclear power stations should be ruled out until they can be proofed against aircraft.¹⁵⁵ That is not an argument against the expansion of LAA: it is an argument against nuclear power.
- (4) Mr Large’s theatrical concerns about the increased risk of terrorist attack may well have caught the public eye, but they lack logic or substance:
- None of the aircraft used in the 9/11 attacks took off from or was scheduled to land at the airport closest to its target. If a similar attack was planned on Dungeness NPS, the hijacked aircraft could come from or be going to anywhere in the UK. The expansion of Lydd is not going to alter a terrorist’s ability to carry out such an attack one jot;
 - Indeed (at least in terms of aircraft taking off from Lydd) there are good reasons why Lydd would not be a sensible place from which to mount such an attack: by the time anyone had stormed to cockpit so as to seize control, Dungeness would have recede into the distance;
 - Mr Large’s scenario of someone trying to shoot down an aircraft on its approach to Lydd in the hope that it will then (i) overshoot the runway (ii) veer off course and (iii) collide with the critical

¹⁵⁴ Pitfield xx by LAA Day 29 pm

¹⁵⁵ Large xx by LAA, Day 28 am

part of the NPS simply leaves too much to chance. Anyone with the weaponry to bring down an aeroplane would do much better to point their missiles directly at the NPS.

(5) The government has recently been through the exercise of considering the risk which flights to and from Lydd pose to nuclear safety in the context of its review of the options for future nuclear power stations in this country. Although Dungeness C has, for the time being, been ruled out, this decision was explicitly *not* based on grounds of nuclear safety associated with the Airport.

89. In summary, there is a consistent record of the issue of nuclear safety having been addressed by the Secretary of State, by the regulator and by the government, always leading to the conclusion that there is no unacceptable risk. In our submission, nothing which has been said by LAAG should cause the Secretary of State to depart from that.

Viability

90. A significant part of LAAG's case has been devoted to arguing that the expansion of Lydd is not viable, in particular because the constraints on the airspace surrounding the airport will discourage potential operators from coming here.

91. We begin with the observation that there is an obvious inconsistency in LAAG's case in this regard: on the one hand, they object to the applications because of alleged consequences which could only arise if the airport is successful; while on the other hand contending that this will, in fact, never happen. As a matter of logic, it is impossible to ride both horses.

92. In terms of the detailed arguments about what aircraft will and will not be able to take off from the extended runway, and whether they will be able to do so with a full or reduced payload, we leave it to LAA to make any necessary submissions. From the perspective of a local planning authority, there is a much simpler answer to this objection – namely that, if the applications are in all other respects acceptable, the fact that they might not be viable is irrelevant. We merely note that LAA has already invested very significant sums in improvements to the airport, and in pursuing these two applications. If permission is granted, implementing the consents will also be a significant step. LAA has clearly taken expert advice on this, and is satisfied that the investment is worthwhile.
93. That conclusion has been supported at this Inquiry by the detailed expert evidence of Ms Congdon.¹⁵⁶ While Ms Congdon takes a more cautious view of the catchment area which Lydd would serve and the rate at which the Airport should be expected to grow than was set out in the ES, she nevertheless identifies an *existing* demand within the local catchment area for Lydd of some 2.5 million passengers p.a. (of which 1.3 million would be travelling to “top 40” destinations in volumes which would make services from LAA viable), and predicts that these figures will grow by 2.7% p.a. to 2020 and then 2.5% to 2030.¹⁵⁷
94. Ms Congdon’s estimates take on board the doubts which LAAG have expressed about the extent to which Lydd is likely to penetrate the London market, the realism of flights to UK destinations and the impacts of competition from HS1, Channel Tunnel and Dover ferry services: as she explained in cross-examination, her forecasts do not rely on passengers coming from London or on services within England, or to Paris, Brussels or destinations served by surface links.¹⁵⁸ Even with these allowances, there is ample evidence that the expansion of Lydd is viable. However, this is not a matter which goes to the acceptability of the applications before this Inquiry. If Ms Congdon is wrong and the proposals are not viable, all it

¹⁵⁶ LAA/4/A in general; LAA/4/D paras 3.2-3.11 in particular

¹⁵⁷ LAA/4/A Section 5; key points summary at 5.58-5.65

¹⁵⁸ Congdon xx by LAAG, Day 15 pm

will mean is that none of the allegedly adverse effects which local residents fear will ever happen. Viability is therefore not an issue which need trouble the Secretary of State.

Localism

95. We have dealt with all the other grounds of objection in alphabetical order. If we make an exception for “localism”, it is because it is perhaps the most difficult to place in any recognised framework. In part, that is because the government’s proposals for giving effect to its “localism” agenda are still embryonic: although there is a clear desire to devolve power from the former regional planning bodies to local communities, exactly how this will work in practice remains to be seen.
96. At this Inquiry, both sides have argued that localism supports their case. This is almost certainly a reflection of the extent to which the airport’s proposals divide opinion within the community. You will have seen that division very clearly in the different presentations at the evening session. It is also reflected in the contrasting results of the various “referenda” which have been carried out. In our submission, there is no easy way to cut through these arguments, other than to recognise that localism must, ultimately, be underpinned by democratic accountability. In this regard, it is a telling factor that at both national¹⁵⁹ and local level, the candidates who have been successfully elected or re-elected – from both sides of the political fence - are those who have stood on a platform of positive support for the Airport.
97. At this Inquiry, representatives such as Damian Collins MP, Cllr Tomlinson and Cllr Waters have given eloquent testimony to the importance of LAA’s proposals for the local economy. These are people who are well aware of the opposition to LAA’s proposals, but have arrived at their positions of support having canvassed opinion across the whole of the electorate. They have a clear understanding, not

¹⁵⁹ Damian Collins MP, public session am

only of the overall balance of public *opinion*, but also of what this area needs, where the overall public *interest* lies. If the Secretary of State seeks to advance the localism agenda, he should look no further.

SDC's handling of the application

98. Both in its evidence to this Inquiry and in its Closing Submissions, LAAG has criticised SDC's handling of the application in terms which border on being libellous. If, in these submissions, we do not respond in detail it is only because – as the Inspector has indicated – we do not believe that the pages which LAAG has devoted to this issue will assist the Secretary of State one jot in determining the applications before him. For the record, we simply state that LAAG's allegations are strenuously denied:

- (1) In circumstances where the officers' recommendation was for *refusal*, the suggestion that Mr Ellames and Mr Lewis were somehow “colluding” with the airport is little short of bizarre.
- (2) Officers had no way of predicting what their members' decision would be. In explaining (as LAA had requested) the option of amending the draft AA provided by Bureau Veritas, officers were simply providing appropriate advice on what members would need to do *if* they wished to go against the officers' advice. That is no more than the normal contingency planning which would be expected of any competent planning officer;
- (3) The complaint¹⁶⁰ that this was unlawful because NE had not been consulted on the resulting “composite” AA is not shared by NE, and is legally hopeless. The statutory duty¹⁶¹ is simply to consult NE “for the purposes of the

¹⁶⁰ LAAG Closing para 62

¹⁶¹ now in reg. 61 of the 2010 Habitats Regulations

assessment”, not to consult NE on the final wording of the AA which an authority proposes to make. The Secretary of State will not revert to NE before reaching his decision, nor was SDC under any duty to do so;

- (4) Members were well aware of the fact that NE objected to the applications, and of its reasons for that objection. The suggestion that, because they were mere laypeople, it was unlawful for them to disagree with NE flies in the face of authority.¹⁶² If correct, it would by logical extension prevent the Secretary of State himself from determining these applications, or indeed any application involving alleged impacts on a European site. That is self-evidently not a tenable proposition.

99. It is a matter of deep regret to the Council that LAAG has seen fit to present its evidence on this issue in such inflammatory language, with personal attacks on the integrity of officers who have simply been doing their level best to present a complex proposal to members in a fair and balanced manner.

ECONOMIC BENEFITS: CALL-IN ISSUE (D)

100. We have already referred to the recognition, in the development plan, of the potential importance of Lydd Airport to the local economy. The evidence which has been presented to this Inquiry by Mr Whittaker and Ms Congdon fully supports that policy framework.

101. To start with, we do not believe there can be any doubt that Shepway District in general, and the area of the Romney Marsh in particular, are characterised by slow growth, high unemployment and long-term contraction of established local industries. Out of 354 districts in England, Shepway is ranked as the 123rd most

¹⁶² see **CD9.2** (the CA decision in *R (o.a.o. Morge) v. Hampshire CC*) per Ward LJ at paras 81-82. These observations are unaffected by the SC decision (**CD9.2(a)**).

deprived;¹⁶³ unemployment is higher than the averages for Kent, the South East and the country;¹⁶⁴ and the District's success in creating employment is also lagging.¹⁶⁵ The Regional Economic Strategy for the South East¹⁶⁶ identifies Shepway as an area of generally lower economic activity with a relatively low skilled profile in its workforce, and high dependence on public sector employment. The Economic Regeneration Strategy for Shepway¹⁶⁷ highlights (i) the perception that the district is peripheral; (ii) the localised areas of deprivation; (iii) the difficulty in retaining young professional people; and (iv) the low business start-up rates.

102. In terms of existing employment, the Romney Marsh area is heavily reliant a small number of major employers¹⁶⁸ – most notably, the Dungeness Nuclear Power stations, where decommissioning of Dungeness A has already begun, and will be followed by Dungeness B. Although SDC is still lobbying for this to change, the draft National Nuclear Policy Statement¹⁶⁹ currently suggests that there is unlikely to be a Dungeness C. This merely adds to the significance of LAA in meeting the socio-economic needs of the area.
103. In summary, this is an area which faces significant economic challenges. In meeting those challenges, SDC utterly rejects the astonishing suggestion made by some local residents that Romney Marsh is “not a place for young people”,¹⁷⁰ and that, instead of looking to build a successful career here, aspiring teenagers should “get a life”¹⁷¹ by moving away to find work. The attractiveness of the area to what Mrs Barton describes as “grey power” (wealthy people looking for a place to retire) has done little to redress the existing problems of underperformance. Refusing to

¹⁶³ see **SDC/3/A** para 4.3; **LAA/4/A** para 3.44

¹⁶⁴ see **SDC/3/A** para 4.7; **LAA/4/A** para 3.47

¹⁶⁵ see **LAA/4/A** para 3.46

¹⁶⁶ **CD7.2**

¹⁶⁷ **CD7.8** page 13

¹⁶⁸ **SDC/3/A** paras 4.8-4.12

¹⁶⁹ **CD15.1**

¹⁷⁰ Atkins, public session/evening

¹⁷¹ Raguin, public session/evening

countenance the needs and expectations of the younger population undermines everything that institutions such as the Marsh Academy are trying to achieve; and is a recipe for long-term continuing deprivation and social division. It is essential that new businesses which offer investment, skilled work and the opportunity to raise the profile of the area are encouraged.

104. Turning to the contribution which the Airport can make, LAA has consistently been identified in socio-economic policy documents for its potential to improve the local economy: the Economic Regeneration Strategy for Shepway 2007-2017¹⁷² describes it as one of the district's "most prominent assets"; the Shepway Community Plan¹⁷³ lists the expansion of LAA as one of the "key building blocks" on which progress towards the vision for Shepway depends; while "Unlocking Kent's Potential"¹⁷⁴ describes LAA as an opportunity for "transformational investment" which should be maximised.
105. In terms of direct job creation, it is not possible to predict precisely how many new jobs the applications might create. Based on a rate of 500 jobs per million passengers p.a., reducing to 400 by 2030, Ms Congdon estimates the runway extension would produce 60 direct new jobs, rising to between 130 - 140 once the new terminal is constructed, with a further 30-60 new indirect or induced jobs.¹⁷⁵ Mr Whittaker considers that it is reasonable to expect that the airport will generate around 350 direct jobs per million passengers (which he regards as conservative estimate) and that the figure could be as high as 600.¹⁷⁶ Although Mrs Barton rejects the latter figure, she herself advocates a bracket of 250-450 jobs per million

¹⁷² **CD7.8** p. 10

¹⁷³ **CD11.19** p. 5. The Shepway Community Partnership has now been superseded by the East Kent Local Strategic Partnership, but the latter's strategy ("Lighting the Way to Success, **CD11.20** para 1.1.4) also recognises the role of LAA in improving economic performance.

¹⁷⁴ **CD11.18** p. 23

¹⁷⁵ **LAA/4/A** para 6.7-6.11; Table 6.1

¹⁷⁶ **SDC/3/A** paras 5.8-5.14

ppa,¹⁷⁷ and is therefore broadly content with a figure towards the lower end of Mr Whittaker's range.¹⁷⁸

106. Notwithstanding the fact that these new jobs would be created over several years, SDC considers that the contribution they would make to the local economy is important, and to be welcomed. Moreover, objectors' criticisms of the number of jobs which would be created in any given year overlook the fact that the expansion of the airport would stimulate indirect and induced employment.
107. To start with, the airport would also bring new visitors to the area. Although the majority of passengers are expected to be "outbound", CAA Passenger Surveys indicate that between 3 and 9% will be inbound tourists.¹⁷⁹ Additionally, some "outbound" tourists will choose to spend additional time in the area, or need to take advantage of local facilities such as hotels, even if only for overnight stays.
108. In other respects, the Airport would raise the profile of this part of Kent. One of the key difficulties which Shepway has faced in attracting businesses to the district is the perception that it is peripheral, remote or "out on a limb".¹⁸⁰ The existence of a small regional airport would be a significant step towards changing that image. Adjoining authorities such as East Sussex County Council and Rother District also support the proposals, on the basis that the Airport is likely to bring social and economic benefits to their areas as well.¹⁸¹
109. Individually and cumulatively, SDC believes that these benefits are of considerable importance to the future prosperity of the area. They clearly count in favour of the applications. They are a matter on which we invite the Secretary of State to place significant weight.

¹⁷⁷ LAAG/8/A para 5.5.2

¹⁷⁸ LAAG/8/E para 2.7; Barton XX

¹⁷⁹ LAA/4/A paras 6.21, 6.50

¹⁸⁰ SDC/3/A para 5.22

¹⁸¹ SDC/3/A paras 6.10-6.12

CONDITIONS AND SECTION 106 AGREEMENT: CALL-IN ISSUES (E) AND (F)

110. SDC considers that any permission granted should be subject to planning conditions, and to the obligations set out in the s. 106 Agreement. The agreed conditions and s. 106 have been the subject of widespread consultation (not only with statutory consultees but with all the rule 6 parties), and the Council has gone to considerable lengths to ensure that the concerns raised have been taken on board. Following lengthy negotiations with LAA, SDC is satisfied that all reasonable and necessary measures and controls have now been incorporated; that the s.106 and that the proposed conditions and s. 106 provide a robust and enforceable means (including an appropriately funded monitoring scheme) of ensuring that the impacts of expansion at Lydd do not go beyond those which have been assessed; and that the proposals will be an environmentally sensitive and well-designed local airport which meets the needs of the future. Compliance with reg. 122 of the CIL Regulations is covered in **CD17.26**.

CONCLUSIONS

111. Notwithstanding the detailed scrutiny to which all the arguments have been exposed over the last 8 months, in SDC's submission there is nothing in the material which has been presented at this Inquiry which suggests that the Council was wrong in its decision that planning permission should be granted. Rather, the evidence strongly suggests that the Council's decision was correct, and that this limited expansion on the existing airport should be allowed.

112. The government has made it clear that the development has an important role to play in the economic and social prosperity of the country, and that the planning system should facilitate, rather than frustrate sustainable development which is in the public interest. These applications were submitted in December 2006. SDC

would now ask the Secretary of State to come to a speedy positive decision to enable this important local infrastructure investment project to come forward as soon as possible. Subject to the imposition of the conditions which we have put forward, and the (now finalised) s. 106 agreement, we invite the Secretary of State:

- (1) to make an appropriate assessment concluding that neither application would have an adverse effect on the integrity of the internationally designated sites;
- (2) to agree with the conclusions reached by Shepway's local elected representatives that the applications accord with national and development plan policy and would deliver sustainable development and sustainable economic growth;

and accordingly

- (3) to grant permission for both the runway extension and the proposed new terminal building.

PAUL BROWN Q.C.

15th September 2011

**4-5 Gray's Inn Square
Gray's Inn
LONDON WC1R 5AH**