



TOWN AND COUNTRY PLANNING ACT 1990

Statement of Case of Natural England

**Planning applications by London  
Ashford Airport Ltd for the  
Construction of a Runway Extension  
and Erection of a Terminal Building**

**Site at London Ashford Airport, Lydd, Romney  
Marsh, Kent. TN29 9QL**

Planning Inspectorate ref: APP/L2250/V/10/2131934  
APP/L2250/V/10/2131936

LPA ref : Y06/1648/SH  
Y06/1647/SH

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## **1. The Purpose of this Statement**

- 1.1 This is the statement of case of Natural England submitted in pursuance of rule 6(6) of the Town and Country Planning (Inquiries Procedure) Rules 2000 in relation to two planning applications originally submitted by London Ashford Airport Ltd (“LAA”) to Shepway District Council (“SDC”), and now before the Secretary of State, for determination: the first (SDC planning application reference number Y06/1648/SH) for a runway extension to enable fully laden jets to land and the second (SDC planning application reference number Y06/1647/SH) for a new terminal building to be capable of processing up to 500,000 passengers per annum. The runway extension application consist of a 294 metre runway extension taking the runway to 1,799 metres, a 150 metre starter extension, a clear and graded area of 105 metres either side of the runway (from the central strip), and a runway end safety extension. The terminal application consists of 7,666m<sup>2</sup> gross external areas including a check-in area, departure lounge, arrivals lounge, baggage reclaim, ancillary retail, security, ancillary officers and staff area, a new car parking area to the north of the new terminal and enlarging the existing car parking spaces by 181 spaces to a total of 637 cars. Additional parking to the north and south of the new terminal building with an additional 71 spaces are also proposed. The proposals are located at London Ashford Airport, Lydd, Romney Marsh, Kent TN29 9QL.
- 1.2 It is the intention of Natural England to appear at the public inquiry, to call evidence and to make submissions in respect to its objections to these applications. This statement is structured to set out particulars of the case that Natural England will put forward at the inquiry.
- 1.3 The scope of Natural England’s case will cover the following matters:
  - a) The status and functions of Natural England (Section 2 below)
  - b) The legislative framework (Section 3 below)
  - c) The position of Natural England (Section 4 below)
  - d) The nature conservation designations and interests potentially affected by the proposed project (Section 5 below)
  - e) Natural England’s objections to the proposals (Section 6 below)
  - f) The identification of relevant documents (Section 7 below)

## **2. Status and Functions of Natural England**

- 2.1 Natural England is a statutory body established under the Natural Environment and Rural Communities Act 2006 (the “NERC Act”). Natural England is the statutory advisor to Government on nature conservation in England and promotes the conservation of England’s wildlife and natural features. It is financed by the Department for Environment, Food and Rural Affairs (“Defra”) but is a Non-Departmental Public Body, which forms its own views based on the best scientific evidence available.

2.2 Natural England works for people, places and nature, to enhance biodiversity, landscapes and wildlife in rural, urban, coastal and marine areas; promoting access, recreation and public well-being, and contributing to the way natural resources are managed so that they can be enjoyed now and by future generations.

2.3 Section 2 of the NERC Act provides that Natural England's statutory general purpose is:

*'... to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development.'*

Section 2(2) states that Natural England's general purpose includes –

- promoting nature conservation and protecting biodiversity;
- conserving and enhancing the landscape;
- securing the provision and improvement of facilities for the study, understanding and enjoyment of the natural environment;
- promoting access to the countryside and open spaces and encouraging open-air recreation; and
- contributing, in the other ways, to social and economic well-being through management of the natural environment.

2.4 Natural England is also a statutory consultee in respect of (amongst other things) plans and projects subject to the requirements of the various Environmental Impact Assessment Regulations in England, proposals likely to damage any of the flora, fauna or geological or physiographical features for which a Site of Special Scientific Interest ("SSSI") has been designated, and plans or projects likely to have a significant effect on any European site. European sites include Special Protection Areas ("SPAs") and Special Areas of Conservation ("SACs") or sites listed under the 1971 Convention on Wetlands of International Importance ("Ramsar sites"). In addition, Natural England exercises duties with regards to SSSIs under the Wildlife and Countryside Act 1981 (as amended) ("the 1981 Act") and in relation to Natura 2000 sites under the Conservation of Habitats and Species Regulations 2010 (the "Habitats Regulations").

### **3. Legislative Framework**

#### **European Sites**

##### **Special Protection Areas and Special Areas of Conservation**

3.1 Council Directive 2009/147/EEC on the conservation of wild birds (the "Birds Directive") requires Member States to take the requisite measures to maintain the population of species of wild birds at a level which corresponds, in particular, to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements. With this objective in mind, Article 4 of the Birds Directive requires the classification of areas as SPAs, for individual species listed on Annex I of the Directive and/or for regularly occurring migratory species. These requirements previously existed in Council Directive 79/409/EEC on the conservation of wild birds.

- 3.2 Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the “Habitats Directive”) aims to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora. Measures taken pursuant to the Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of community interest. Member States, in consultation with the European Commission, must select and designate areas for protection as SACs. Together with SPAs, these sites make up the Natura 2000 ecological network.
- 3.3 SACs and SPAs are subject to the protection required by Article 6(2), 6(3) and 6(4) of the Habitats Directive.<sup>1</sup> Article 6(2) requires Member States to take appropriate steps to avoid in these areas the deterioration of natural habitats and the disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of the Directive. Articles 6(3) and (4) require that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect on it, either individually or in combination with other plans or projects must be subject to an appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of such an assessment, such plans or projects may only be agreed, save in the circumstances provided for in Article 6(4), after ascertaining that they will not adversely affect the integrity of the site. Article 6(4) provides that despite a negative assessment of the implications for the site a plan or project may nonetheless proceed where there are no alternatives to it and imperative reasons of overriding public interest why it must proceed. Where a plan or project proceeds on this basis, compensatory measures must be put in place to ensure the overall coherence of the Natura 2000 network.
- 3.4 Article 6(1) provides that Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites.
- 3.5 SACs and SPAs are protected as European Sites in England by the Habitats Regulations which transpose the relevant parts of the Habitats Directive into domestic law.
- 3.6 This case involves the Dungeness SAC, Dungeness to Pett Level SPA, Dungeness, Romney Marsh and Rye Bay pSPA and proposed Ramsar site. The citations, dates of designation, and designation maps (or proposed designation maps and citations as appropriate) are included within Annex A.
- 3.7 In determining these applications, the Secretary of State will be acting as a competent authority for the purposes of regulations 61, 62 and 66 of the Habitats Regulations. These regulations describe a sequence of steps to be taken by the competent authority in respect of a European site (including the SAC and SPA of relevance to this inquiry) for the purposes of the Habitats Regulations, when deciding whether to authorise a project. Those steps are:

Step 1 Under regulation 61(1)(b), consider whether the project is directly connected with or necessary to the management of the site? If not—

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<sup>1</sup> SACs are subject to these Articles by direct reference; SPAs are subject to these Articles by reason of Article 7 of the Habitats Directive.

- Step 2 Under regulation 61(1)(a) consider whether the project is likely to have a significant effect on the site, either alone or in combination with other plans or projects. If Yes—
- Step 3 Under regulation 61(1), make an appropriate assessment of the implications for the site in view of its current conservation objectives. In so doing, it is mandatory under regulation 61(3) to consult Natural England, and optional under regulation 61(4) to take the opinion of the general public. Regulation 61(2) empowers the competent authority to require the applicant to provide information for the purposes of the appropriate assessment, or to enable the authority to determine whether such an assessment is required.
- Step 4 Pursuant to regulation 61(5) and (6), consider whether the project will adversely affect the integrity of the site, having regard to the manner in which it is proposed to be carried out, and any conditions or restrictions subject to which that authorisation might be given (the “Integrity Test”).
- Step 5 In accordance with regulation 61(5), but subject to regulation 62, reject the project unless, it is ascertained that the project will not adversely affect the integrity of the site.
- Step 6 If the project fails the Integrity Test in respect of the site, consider, in accordance with regulation 62(1), whether one is satisfied that there is no alternative solution; if not so satisfied, reject the project; but if so satisfied, proceed to steps 7 and 8.
- Step 7 Consider, in accordance with regulation 62(1), but subject to Step 6, whether one is satisfied that the project must be carried out for imperative reasons of overriding public interest.
- Step 8 Consider in accordance with regulation 66 whether one can secure that compensatory measures are taken which would be necessary to secure that the overall coherence of Natura 2000 is protected.

### **Potential SPA**

- 3.8 As a matter of policy, the Government also applies the foregoing procedures in respect of *potential* SPAs (“pSPAs”), even though these are not (yet) European sites as a matter of law. See paragraph 5 of *Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System* (“ODPM Circular 06/2005”) and paragraph 6 of *Planning Policy Statement 9: Biodiversity and Geological Conservation* (“PPS 9”). The proposed designation, and the effects of the proposals upon it, are in any event important and weighty material considerations in the planning decision to be made.
- 3.9 Formal consultation on the designation of Dungeness, Romney Marsh and Rye Bay pSPA were sent to consultees on the 16 September 2010. The proposed citation and map are enclosed in Annex A.

## Proposed Ramsar Site

- 3.10 In relation to its international obligations under the 1971 Convention on Wetlands of International Importance, the Government designates Ramsar sites in accordance with the criteria set out in the Convention, in recognition of the international importance of these sites as a wetland wildlife habitat. As a matter of policy, the Government has chosen to apply the same level of protection afforded to SPAs and SACs to *designated* Ramsar sites (see para 6 of PPS9).
- 3.11 Formal consultation on the proposal to list Dungeness, Romney Marsh and Rye Bay as a Ramsar site were sent to consultees on the 16 September 2010. The proposed citation and map are enclosed in Annex A.
- 3.12 The provisional designation timetable for the *proposed* Ramsar site that may be affected by LAA's proposals is shown in Annex B. Since the Ramsar site could, potentially, be designated by the time the Secretary of State is asked to consider the Inspector's report, Natural England advises that the Inspector should consider and apply the above tests to the interest features of the proposed Ramsar site which may be affected by LAA's proposals. If no such assessment is undertaken as part of this inquiry, and in the event that the proposed Ramsar site is subsequently designated, the Secretary of State would then, in accordance with Government policy, be obliged to carry out a review of any planning permission granted in relation to LAA's proposals in accordance with regulation 63 of the Habitats Regulations (see paragraph 34 of ODPM Circular 06/2005).
- 3.13 The proposed designation, and the effects of the proposals upon it, are in any event important and weighty material considerations in the planning decision to be made.

## Site of Special Scientific Interest

- 3.14 Section 28G of the 1981 Act places legal obligations on certain authorities in relation to SSSIs. These authorities are known as "section 28G authorities". The Secretary of State expects that all section 28G authorities will take full account of their responsibilities under this duty whenever their actions may affect SSSIs. The legislation provides that section 28G authorities include a Minister of the Crown,<sup>2</sup> Government department, a local authority, and any other public body of any description.
- 3.15 An authority to whom section 28G of the 1981 Act applies has a duty in exercising its functions so far as their exercise is likely to affect the flora, fauna or geological or physiographical features by reason of which a SSSI is of special interest to:

*'take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.'*

- 3.16 Parts of the application proposals in this case take land directly from the Dungeness Romney Marsh and Rye Bay SSSI, which was first notified in 2006. The citation and

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<sup>2</sup> Within the meaning of the Ministers of the Crown Act 1975.

notification map are provided within Annex A.

- 3.17 This section 28G duty applies to Natural England and the Secretary of State for purposes of this inquiry. It should be noted that this duty also applies to SDC in its role as local planning authority.
- 3.18 In addition, where the permission of a section 28G authority is needed before proposed operations may be carried out, the section 28G authority must, in accordance with section 28I(5) of the 1981 Act, take any advice received from Natural England into account:
- (a) in deciding whether or not to permit the proposed operations; and
  - (b) if it does decide to do so, in deciding what (if any) conditions are to be attached to the permission.
- 3.19 As LAA requires planning permission from the Secretary of State in order to proceed with its proposals, and as the Secretary of State is a section 28G authority in this matter, the duties under section 28I(5) apply to the Secretary of State as well.<sup>3</sup>

### **European Protected Species**

- 3.20 Species listed under Annex IV(a) to the Habitats Directive (and which are also listed in Schedule 2 of the Habitats Regulations by reason of the transposition of the Habitats Directive), are referred to as “European Protected Species”. In a case in 2009<sup>4</sup> it was established that a local planning authority, and by inference any determining authority (such as the Secretary of State in this case), must apply the tests of Article 16(1) of the Habitats Directive to their consideration of planning applications which have an effect on European Protected Species. LPAs (and here the Secretary of State) must consider whether:
- there are no satisfactory alternatives;
  - there are imperative reasons of overriding public interest (including socio-economic reasons); and
  - that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
- 3.21 Although this duty applied to SDC in its role as local planning authority, it is not clear where its consideration of these tests is recorded, nor how it reached its decisions with regards to the effects of the proposals on European Protected Species.
- 3.22 The European Protected Species of relevance to this application are great crested newts and potentially several species of bat (although LAA’s survey work to date is insufficient

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<sup>3</sup> Natural England accepts that the notice requirements of section 28I (2) to (4) have been satisfied for the purposes of the Secretary of State’s determination of the planning applications at issue here.

<sup>4</sup> *R (Woolley) v Cheshire East Borough Council* [2009] EWHC 1227 (Admin).

to determine the likelihood of the latter occurring and being affected by the development proposals).

## Environmental Impact Assessment

- 3.23 The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (the “EIA Regulations”) enact Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (the “EIA Directive”). Planning permission cannot lawfully be granted for EIA development unless there has been substantial compliance with the EIA Regulations.<sup>5</sup> Planning permission will be unlawful if it attempts to leave over issues relating to the significance of environmental impacts or the effectiveness of mitigation.<sup>6</sup>
- 3.24 Information capable of meeting the requirements of Schedule 4 to the EIA Regulations must be provided before planning permission can be granted.<sup>7</sup> The requirements of Schedule 4 include:
1. a description of the aspects of the environment likely to be significantly affected by the development including fauna;
  2. a description of the likely significant effects of the development on the environment, including direct, indirect, secondary and cumulative effects;
  3. a description of the measures envisaged in order to prevent/avoid, reduce and remedy/offset the significant adverse effects on the environment;
  4. the data required to identify and assess the main effects which the development is likely to have on the environment.

## Conservation of Biodiversity

- 3.25 Section 40(1) of the NERC Act places a duty on public authorities (including, for purposes of determining LAA’s planning applications at issue in this inquiry, the Secretary of State) with respect to the conservation of biological diversity, as follows:

*‘Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.’*

- 3.26 Many of the species within the designated sites citations (which are provided in Annex A) are also species listed in UK Biodiversity Action Plan.<sup>8</sup>

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<sup>5</sup> *Berkeley v SSE* [2001] 2 AC 603.

<sup>6</sup> *Smith v SSETR* [2003] EWCA Civ 262.

<sup>7</sup> *R v Cornwall CC, ex p Hardy* [2001] Env LR 25.

<sup>8</sup> The UK Biodiversity Action Plan published in 1994 was the United Kingdom Government’s response to signing the Convention on Biological Diversity at the 1992 Rio Earth Summit. It set out a series of species for which work was needed to halt the loss of biodiversity. These are commonly referred to as BAP species.

## Development plan and other policy

- 3.27 As identified in the letter dated 22 June 2010 sent on behalf of the Secretary of State, the statutory development plan comprises the Shepway Local Plan. Any support in the site-specific policy relating to Lydd Airport (TR15) is expressly qualified so that the airport should only be permitted to expand *'provided there would be no significant impact upon the internationally important wildlife communities in the Lydd/Dungeness area'*. Moreover, policy CO14 relates to Dungeness in particular, and provides that priority will be given to considerations related to its international importance for flora and fauna over other planning considerations.
- 3.28 Local Plan policy SD1 enshrines the principle of sustainable development in the statutory development plan. It requires in particular that developments should *'protect and enhance designated or proposed sites of international, national, countywide and local wildlife importance and plant or animal life protected by law'*, and *'maintain and enhance water, soil and air quality'*. Developments which significantly conflict with any of these particular requirements can only be permitted where three criteria are met, including that there is an overriding economic or social need, negative impacts are minimised and measures are taken to ensure that there is no net environmental loss. Other Local Plan policies deal with the wildlife designations, including CO8, CO9, CO11, and CO13. These policies include the requirements that, if development is to be permitted, adverse impacts must be minimised and full compensation must be provided for all remaining adverse effects.
- 3.29 In relation to national planning policy, various provisions in PPS9 are relevant. The Government's objectives as set out in PPS9 are that developments should have minimal impacts on biodiversity and enhance biodiversity wherever possible; biodiversity is to be conserved, enhanced and restored. It is a key principle not only to maintain but also to enhance, restore or add to biodiversity (para 1(ii)). Where there would be significant harm to biodiversity, development should be located on alternative sites (para 1(vi)). Where that is not possible, and the harm is not to be adequately mitigated against or appropriately compensated for, then planning permission should be refused (para 1(vi)). PPS9 explains that international sites are the most important sites for biodiversity (para 6). Where a development is likely to have an adverse effect on a SSSI planning permission should not normally be granted (para 8). Planning permission for such a development can only be granted in specified circumstances and only where the harmful aspects are mitigated and the SSSI's biodiversity conserved and enhanced (para 8). Paragraph 16 also deals with protected species and their habitats.
- 3.30 *Planning Policy Statement 1: Delivering Sustainable Development* ("PPS1") is also relevant. The effective protection of the environment is one of the four aims for sustainable development in PPS1. PPS1 requires that the natural environment should be protected and enhanced (paras 5, 17). PPS1 provides in particular that habitats with national and international designations are to receive the highest level of protection (para 17). It provides that planning decisions should be based on up-to-date information on the environmental characteristics of the affected area, the potential impacts of development on the environment, and a recognition of the limits of the environment to accept further development without irreversible damage (para 19). Significant adverse impacts on the environment should be avoided (para 19).
- 3.31 Lydd is named in the Government's 2003 White Paper, *The Future of Air Transport*, as

one of the smaller airports whose operators argue could grow (para 11.98). Lydd was noted as an airport which could play a role in meeting local demand, subject to relevant environmental considerations (para 11.99). The White Paper analysis, however, identified a number of issues of concern common to all proposals for offshore or coastal airports, including that: *'...damage to sensitive habitats is often more likely [at these airports]...'* and that *'[r]isks posed by bird strike would be expected to be greater at estuarine sites, especially those on or close to the shoreline'* (para 11.110).

- 3.32 Environmental impacts are considered generally in Chapter 3 of the White Paper. This provides that the environmental impact of airport development should be managed so that impacts on biodiversity, such as disturbance of habitats and species, are minimized (para 3.6). Chapter 3 also states that:

*'[a]t the local level, decisions about the amount and location of future airport capacity must properly reflect environmental concerns. Adverse impacts should be controlled, mitigated and, where relevant, made the subject of suitable compensation.'*

Chapter 3 of the White Paper specifically states, in respect of local air quality, that it *'is maintained within legal limits across all relevant pollutants in order to protect human health and the wider environment'*. Other local impacts are also considered in Chapter 3. It states that:

*'In assessing options for airport development, we have taken into account a wide range of other environmental impacts. We are clear that loss of habitats, species, landscape and built heritage should be minimized where any new development takes place, including ... replanting of woodland, creation of new recreation sites, and other measures to preserve and restore as much of the UK's heritage as is compatible with airport safety and feasible within reasonable costs. All relevant water quality and other mandatory environmental standards must be met'* (para 3.34).

- 3.33 Although now no longer part of the statutory development plan, as a result of its recent revocation, it is instructive to consider previous regional planning guidance. The South East Plan did not include Lydd in its policy on airports, whereas it did support an enhanced role for Kent International Airport as an airport of regional significance.
- 3.34 SDC has also indicated its potential future views on how to approach the expansion of Lydd airport. The SDC Core Strategy is currently still emerging and at a very early stage. The preferred option for Lydd airport contained in the Core Strategy Preferred Options report was expressly qualified to allow even ancillary aeronautical business development only where there was *'no impact on designated ecological sites and habitats'*. A summary of responses to the Core Strategy Preferred Options, dated 4 November 2009, is available. This reports that representations on London Ashford (Lydd Airport) *'were almost exclusively objections to inclusion within the Core Strategy'* (page 20). These comments focused on the unsuitability of the airport for commercial airport development as it is surrounded by highly sensitive natural habitats, has major safety issues and there are better alternatives outside the district. The officer comments of key matters and actions arising are that any further consideration of the planning permission for Lydd airport would include an assessment of the potential impact of the development on the local environment, and in particular, the Natura 2000 sites.

## 4. The Position of Natural England

- 4.1 Natural England was originally consulted by SDC on the LAA planning applications because it was considered that the proposals may affect a SSSI, SPA and SAC and because the development was accompanied by an Environmental Statement, which forms part of the Environmental Impact Assessment under the EIA Regulations.
- 4.2 Natural England's position on the applications has been set out in correspondence with SDC, including in letters dated 3.3.10, 11.2.10, 26.1.10, 9.4.09, 14.10.08, 19.2.08, 18.12.08, 20.11.07, and 9.3.07. Those representations are not repeated in this statement but largely remain relevant.
- 4.3 Natural England considers that LAA's proposals, as submitted in the form of the planning applications and associated supporting documents, would be likely to have significant effects on the interest features of the SPA, SAC, pSPA and proposed Ramsar ("pRamsar") sites either alone or in combination with other plans or projects. Based on the evidence provided by LAA to date, there is reasonable scientific doubt as to the absence of adverse effects on the integrity of the SPA, SAC, pSPA and pRamsar sites. In addition, Natural England is of the opinion that the proposals are likely to damage special interest features of the Dungeness, Romney Marsh and Rye Bay SSSI ("the SSSI"). A number of species listed on UK Biodiversity Action Plan ("BAP") are also interest features of the SSSI, SAC, SPA, pSPA and/or pRamsar site, and Natural England believes that the application would result in harm to biodiversity. Natural England has therefore objected to the proposals as being damaging to important nature conservation interests, and will appear at the public inquiry as an objector.
- 4.4 SDC resolved to grant planning permission on 3 March 2010, contrary to the advice of its officers and despite the findings of the appropriate assessment conducted for it by its consultants. SDC radically departed from the findings of its consultant's appropriate assessment on the night of its decision. SDC did not provide any rationale as to why it had adopted such a radical change of position in its appropriate assessment when it resolved to conclude that the proposals would not have any adverse effects on the integrity of the SAC and SPA. Natural England's advice should have been accorded considerable weight and SDC should only have departed from it where there were cogent and compelling reasons to do so.<sup>9</sup> No such reasons were given by SDC.
- 4.5 Natural England's objections to LAA's proposals for the purposes of this inquiry are set out in Section 6 below. At the inquiry Natural England will rely on the evidence of witnesses, as follows:
- Natural England will provide an expert witness to present air quality evidence. Natural England's witness will present evidence on air quality modelling data and assumptions (in relation to nitrogen deposition in particular), and the likely impact of the proposals' effects on the air quality of the designated sites.
  - Natural England will provide an expert in bird hazard assessment and control to present evidence on this issue. This expert witness will present evidence related to bird hazard at the airport, bird control and management measures, site

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<sup>9</sup> *R (Akester) v DEFRA* [2010] EWHC 232 (Admin) at para 112.

safeguarding and related policy, legislation and practices.

- Natural England will provide a witness to present evidence to the inquiry on ornithology. The witness will cover the avian interest and importance of the SPA, pSPA, pRamsar and SSSI and describe how these features are likely to be affected by the LAA airport extension proposals.
  - Natural England will also provide a witness to the inquiry who will explain the legal and policy implications additional to those described by other expert witnesses, including the application of the Habitats Regulations, the Birds and Habitats Directives and the EIA Regulations as appropriate. The witness will describe the SAC, and the non-avian interest features of the SSSI and pRamsar site, including their national and international distributions, threats to key communities, the importance and status of these designations, and how the non-avian pRamsar, SSSI and SAC interest features may be affected by the proposals. The witness will also give evidence on the protection afforded to the SSSI under the 1981 Act as amended by Countryside and Rights of Way Act 2000, and the European Protected Species legislation and other protected species legislation and how it applies in this case.
- 4.6 Natural England reserves the right to call further or other witnesses as may appear necessary as the preparations for the inquiry proceed and in particular as discussions continue with LAA.

## 5. The Nature Conservation Designations and Interests in the Area of the Proposed Project

- 5.1 The following is a brief summary of the interest features of the designated areas.<sup>10</sup> Designation citations and maps are included in Annex A.

### International Designations

#### Special Protection Area

- 5.2 Dungeness to Pett Level SPA was classified by the Secretary of State for the Department for Environment, Food and Rural Affairs under the provisions of the Birds Directive on 31 May 2000.
- 5.3 The SPA covers some 1474.04 ha in Kent and East Sussex Counties, and Rother and Shepway District and Ashford Borough planning authorities. The SPA is classified under Article 4.1 of the Birds Directive as it is used regularly by 1% or more of the Great Britain populations of the following species listed in Annex I in any season:
- Wintering Bewick swan (*Cygnus columbianus bewickii*)
  - Breeding common tern (*Sterna hirundo*)

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<sup>10</sup> Ramsar sites are listed, SPAs are classified, SSSIs are notified and SACs are designated under their relevant legislation. In order to simplify the text the term designation has been used to encompass these terms.

- Breeding Mediterranean gull (*Larus melanocephalus*)
- Breeding little tern (*Sterna albifrons*)

5.4 The site is classified under Article 4(2) of the Birds Directive as it is used regularly by 1% or more of the biogeographical populations of the following regularly occurring migratory species (other than those listed in Annex I) in any season:

- Wintering shoveler (*Anas clypeata*)

5.5 The airport is within 530m of the SPA.

### **Special Area of Conservation**

5.6 Dungeness SAC was designated by the Secretary of State for Environment, Food and Rural Affairs under the Habitats Directive in 2005. The SAC covers 3,223.56 ha in Kent and East Sussex. It is designated under Article 4(4) of the Habitats Directive as it hosts the following habitats listed in Annex I:

- annual vegetation of drift lines; and
- perennial vegetation of stony banks (coastal shingle vegetation outside the reach of waves).

5.7 The site is designated under Article 4(4) of the Habitats Directive as it hosts the following species listed in Annex II:

- Great crested newt *Triturus cristatus*

5.8 The extension proposals are partly within the SAC boundary.

### **Proposed International Designations**

#### **Dungeness, Romney Marsh and Rye Bay pSPA**

5.9 On 19 August 2010 Defra wrote to Natural England confirming that Ministers were content for Natural England to agree formal consultation on the classification of Dungeness, Romney Marsh and Rye Bay SPA under the provisions of the Birds Directive.

5.10 The pSPA covers some 4,048.63 ha, in Kent and East Sussex, incorporating proposed extensions (2,580.06 ha) and deletions (10.00 ha). The site qualifies under Article 4(1) of the Birds Directive as it is used regularly by 1% or more of the Great Britain populations of the following species listed in Annex I in any season:

- Wintering Bewick's swan (*Cygnus columbianus bewickii*)
- Wintering bittern (*Botaurus stellaris*)
- Wintering hen harrier (*Circus cyaneus*)
- Wintering golden plover (*Pluvialis apricaria*)
- Wintering ruff (*Philomachus pugnax*)

- Aquatic warbler (*Acrocephalus paludicola*) on passage
- Breeding marsh harrier (*Circus aeruginosus*)
- Breeding avocet (*Recurvirostra avosetta*)
- Breeding mediterranean gull (*Larus melanocephalus*)
- Breeding Sandwich tern (*Sterna sandvicensis*)
- Breeding common tern (*Sterna hirundo*)
- Breeding little tern (*Sterna albifrons*)

5.11 The site qualifies under Article 4(2) of the Birds Directive as it is used regularly by 1% or more of the biogeographical populations of the following regularly occurring migratory species (other than those listed in Annex I) in any season:

- Wintering shoveler (*Anas clypeata*)

5.12 The site qualifies under Article 4(2) of the Birds Directive as it is used regularly by over 20,000 waterbirds (waterbirds as defined by the Ramsar Convention) in any season, as follows. In the non-breeding season, the area is regularly used by 34,625 individual waterbirds (5 year peak mean 2002/3 – 2006/7), including (but not limited to) Bewick's swan *Cygnus columbianus bewickii*, European white-fronted goose *Anser albifrons albifrons*, wigeon *Anas penelope*, gadwall *A. strepera*, shoveler *A. clypeata*, pochard *Aythya ferina*, little grebe *Tachybaptus ruficollis*, great crested grebe *Podiceps cristatus*, cormorant *Phalacrocorax carbo*, bittern *Botaurus stellaris*, coot *Fulica atra*, golden plover *Pluvialis apricaria*, lapwing *Vanellus vanellus*, sanderling *Calidris alba*, ruff *Philomachus pugnax*, whimbrel *Numenius phaeopus* and common sandpiper *Actitis hypoleucos*.

5.13 The designation consultations for the pSPA were sent to consultees on 16 September 2010. The airport boundary is within 300m of the pSPA boundary

### **Dungeness, Romney Marsh and Rye Bay pRamsar site**

5.14 Confirmation that formal consultation to add a new site to the list of Ramsar sites was also included in the letter of the 19 August 2010. The site is proposed because it is a Wetland of International Importance, for wetland habitats, threatened ecological communities and species, and waterbirds. The proposed site is 6,416.15 ha in East Sussex and Kent. The site is proposed to be listed for the following criterion:

- **Criterion 1:** It contains representative, rare, or unique examples of natural or near-natural wetland types:
  - Annual vegetation of drift lines and the coastal fringes of perennial vegetation of stony banks (Ramsar wetland type E – sand, shingle or pebble shores).
  - Natural shingle wetlands: saline lagoons (Ramsar wetland type J – coastal brackish/saline lagoons), freshwater pits (Ramsar wetland type K – coastal freshwater lagoons) and basin fens (Ramsar wetland type U – non-forested peatlands).
- The wetlands on the site including the saltmarsh, natural freshwater, pits, fens, ponds, gravel pits, saline lagoons, margins of wetland bodies, grazing marsh and ditches

qualifies under **Criterion 2** because it supports threatened ecological communities:

- Bryophyte communities including an assemblage of wetland thread-mosses *Bryum* species.
  - Vascular plant communities
  - Invertebrates communities
- The site further qualifies under **Criterion 2** because it supports vulnerable, endangered or critically endangered species:
    - greater water-parsnip *Sium latifolium*
    - Warne's thread-moss *Bryum warneum*
    - water vole *Arvicola amphibius*
    - aquatic warbler *Acrocephalus paludicola*
    - great crested newt *Triturus cristatus*
    - medicinal leech *Hirudo medicinalis*
    - a ground beetle *Omophron limbatum*
    - marsh mallow moth *Hydraecia osseola hucherardi*
    - De Folin's lagoon snail *Caecum amoricum*.
  - The site qualifies under **Criterion 5** because it regularly supports 20,000 or more waterbirds: in the non-breeding season, the site regularly supports 34,957 individual waterbirds (5 year peak mean 2002/3 – 2006/7).
  - The site qualifies under **Criterion 6** because it regularly supports 1% of the individuals in the populations of the following species or subspecies of waterbird in any season:
    - Wintering mute swan (*Cygnus olor*)
    - Wintering Shoveler (*Anas clypeata*)

5.15 The designation consultations for the pRamsar were sent to consultees on 16 September 2010. The airport boundary is within the pRamsar site.

## National Designations

### Dungeness, Romney Marsh and Rye Bay SSSI

5.16 This SSSI is an amalgamation and enlargement of all or parts of eight pre-existing SSSIs and was notified in its present form by English Nature in August 2006 under Section 28C of the 1981 Act, as inserted by Schedule 9 to the Countryside and Rights of Way Act 2000. The site is within the Counties of Kent and East Sussex, and the Borough of Ashford, and districts of Shepway and Rother.

5.17 The SSSI has more notified features than any other SSSI in England. It is notified for the following features (in summary):

- Coastal geomorphology
- Saltmarshes
- Sand dunes

- Vegetated shingle
  - Saline lagoons
  - Standing waters
  - Lowland ditch systems
  - Basin fens
  - Populations of four plant species listed in Schedule 8 of the Wildlife and Countryside Act 1981 (as amended)
  - Assemblage of Schedule 8, nationally rare and nationally scarce vascular plants
  - Populations of vulnerable Warne's thread-moss (*Bryum warneum*)
  - Populations of water voles (*Arvicola terrestris*)
  - Assemblages of breeding birds associated with shingle beaches, saltmarsh, lowland damp grasslands, lowland open water and their margins, and scrub
  - Breeding numbers of 16 species of bird
  - Assemblage of over 20,000 waterfowl, in the non-breeding season
  - Wintering numbers of 17 species of bird and three species during passage periods
  - Metapopulations of great crested newts (*Triturus cristatus*)
  - Endemic species and subspecies of invertebrates
  - Populations of two invertebrate species listed on Schedule 5 of the Wildlife and Countryside Act 1981 (as amended)
  - Populations of ten endangered, vulnerable and rare invertebrate species
  - Assemblages of invertebrates occurring on dry coastal habitats
  - Assemblages of wetland invertebrates
- 5.18 This application site is immediately adjacent to and takes in land directly from the SSSI. The SSSI is 9,090 ha in extent, and is the main component SSSI within the SPA, SAC, pSPA and proposed Ramsar site (although the two proposed designations also include small areas of the Hastings Cliff to Pett Beach SSSI).
- 5.19 Part of the SSSI is a National Nature Reserve ("NNR") under section 19 of the National Parks and Access to the Countryside Act 1949 and section 35(1)(c) of the 1981 Act. The NNR is adjacent to the airport boundary.

## 6. Natural England's Objections to the Proposals

### European Sites

- 6.1. The proposals are likely to have significant effects on some of the internationally important interest features of the sites for which they were designated.
- 6.2. The likely and reasonably foreseeable significant adverse effects of the proposals in light of the best scientific knowledge in the field are that:
- (1) birds, important on their own and as part of assemblages of birds, in the SPA (and pSPA and pRamsar) are likely to be affected as a result of the proposals by the noise and visual impacts of air traffic movements, on and off airfield bird control and management measures, and/or the effects of safeguarding;

- (2) nitrogen deposition arising as a result of the proposals is likely to affect important vegetation communities including but not restricted to lichen species occurring as part of the vegetated shingle in the SAC.

6.3. These effects could significantly affect the coherence of the sites' ecological structure and function which enable them to sustain the habitats, complexes of habitats and/or the levels of populations of the species for which they were designated. It cannot be ascertained that the proposals will not have an adverse effect on the integrity of the sites because the effects on integrity are uncertain but could be significant in relation to the matters noted above. It is not certain that the proposals will not adversely affect the integrity of the sites. It cannot be said that no reasonable scientific doubt remains as to the absence of such effects.

## **SSSI**

6.4. The proposals are likely significantly to damage the following features for which the SSSI is of special interest:

- (1) assemblages and species of birds, as noted above;
- (2) important vegetation occurring as part of the vegetated shingle, as noted above;
- (3) ditches providing established habitats for aquatic invertebrate assemblages, where the proposed replacement ditches do not provide replacement habitat of sufficient quality or quantity.

6.5. The proposals do not avoid or minimise damage to the SSSI.

## **Birds**

6.6. The proposals will substantially increase the noise and visual impacts caused by air traffic movements in the locality of the airport. In addition, LAA will undertake or arrange on and off airfield bird control and management measures, including land management around the airport, which are likely to be significantly increased compared to current activity levels. LAA will also review its existing safeguarding policy around the airport. These measures will have an effect on the habitats available to birds in the locality of the airport, including causing increased disturbance to birds.

6.7. Elements of the breeding bird interest of the SPA, pSPA, pRamsar and SSSI are vulnerable to impacts from the proposals which increase disturbance in particular. Disturbance of breeding birds can have a range of population effects including, but not restricted to, failure to settle, nest desertion and reduced hatching success and/or chick survival due to a reduction in incubation, brooding and food provisioning and associated increases in nest and chick predation. Non-breeding birds are also vulnerable to disturbance, especially in the winter when hard weather conditions, reduced daylight hours and diminishing food resources increases the risk of mortality. Disturbing activities can reduce foraging efficiency, due to increased vigilance and/or displacement to less favourable feeding areas, and increase energy expenditure due to raised stress levels and increased flight activity. These effects can decrease survival and hamper the

development of fat reserves essential for successful migration and breeding.

- 6.8. The on and off airfield bird control and management measures have not been fully specified by LAA and would not in any event be fixed. However, in order, with confidence, to assess the likely impact on the areas around the airport, it would be necessary to determine the frequency, type, location and intensity of the management activities likely to be required to reduce the bird strike risk at the extended airport to an acceptable level. Natural England's evidence will review the draft bird control management plan and available evidence on bird strike risk at the airport, identify additional evidence which ought to have been gathered, and consider the likely on and off airfield bird control and management measures to be taken (including their efficacy, viability and effects).
- 6.9. Site safeguarding is the term used to describe an airport's ability to object to development proposals which may increase the bird hazard within a 13km radius of an aerodrome. Natural England will provide evidence on the probable requirements for aerodrome safeguarding to protect the expanded airport from future developments that could impact adversely on bird strike risk, and the potential implications of this for birds. Safeguarding could result in the prevention of developments and activities which would be proposed to increase or restore bird interest features. Since a 13km site safeguarding boundary includes much of the SPA, SSSI, pSPA and pRamsar sites, application of safeguarding could not only hinder conservation work but also potentially result in an inability fulfill legal requirements requiring positive management of the SPA and SSSI.

## **Nitrogen deposition**

- 6.10. The habitats and communities at Dungeness are internationally important, in particular the vegetation communities on the shingle (both a SAC and SSSI interest feature) include communities that are unique. These habitats and communities, including the lichen features which are an integral component of the habitats, are fragile and are extremely sensitive to atmospheric pollution, in particular nitrogen deposition. The vegetated shingle is a low nutrient habitat. Nitrogen deposition increases the amount of nutrients available, which in habitats adapted to low nutrient conditions leads to more competitive species such as grasses dominating over less competitive species. This in turn leads to loss of diversity, shading, changes in community structure, balance and microclimate and therefore a reduction in the conservation value of the vegetated shingle habitat.
- 6.11. Critical loads are thresholds set below which harmful integrity on the relevant vegetation type should not occur.<sup>11</sup> LAA has tested the acceptability of nitrogen deposition by reference to an assessment criterion which represents the lower end of a critical load range for nitrogen deposition taken from the Air Pollution Information System ("APIS").<sup>12</sup> However, in selecting this critical load, APIS used a proxy habitat for the vegetation

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11 "A quantitative estimate of an exposure to one or more pollutants below which significant harmful effects on specified sensitive elements of the environment do not occur according to present knowledge". Source = website of the UK National Focal Centre for critical loads modelling and mapping: [http://critloads.ceh.ac.uk/what\\_is\\_cl.htm](http://critloads.ceh.ac.uk/what_is_cl.htm)

12 Air Pollution Information System (APIS) [www.APIS.ac.uk](http://www.APIS.ac.uk) APIS has been developed in partnership by the UK conservation agencies and regulatory agencies and the Centre for Ecology and Hydrology to provide information on air pollution and the effects on habitats and species.

communities found at Dungeness, as there was no empirical evidence relating to vegetated shingle. New evidence was made available to SDC prior to SDC's consideration of the applications (which would also have been available to LAA) detailing a scientific study which demonstrated a need to lower the critical load threshold for some coastal habitats, which have implications for vegetated shingle.

- 6.12. The recent research<sup>13</sup> which comprises this new evidence has shown that acidic coastal Lichen-rich ecosystems are more sensitive to nitrogen deposition than was previously understood. This research indicated that 8 kgN/ha/yr for acid systems rising to 15 kgN/ha/yr for those on a calcareous substrate would be a more appropriate threshold. The value at the time of writing currently applied on the APIS database to a range of coastal habitats including Dungeness is 10-20 kgN/ha/yr.
- 6.13. This information was reviewed at an international workshop in June 2010<sup>14</sup> which proposed changes to critical loads for such vegetation. This work has important implications for the critical load benchmark used in APIS for vegetated shingle, and the Dungeness SAC in particular. This new evidence, which was made available to SDC before its consideration of these proposals, constitutes the best available scientific information for the assessment of effects of nitrogen deposition on the SAC at Dungeness.
- 6.14. LAA's assessment of nitrogen deposition effects from the proposed schemes is based upon modelled estimated future levels of deposition. The modelled estimates are based on a computer model, in this case ADMS-Airport. Air quality modelling requires very precise parameterization and relies strongly on the input assumptions and the extent to which the actual operations are represented in the modelling. The predicted nitrogen deposition effects of the proposals are affected by the assumptions made and input data used by LAA.
- 6.15. Natural England will provide evidence on these issues, including the consequences on concentrations of oxides of nitrogen and nitrogen deposition and the importance attached to the impact of the airport proposals. Natural England will relate the outcomes of the modelling evaluation to impacts on the SAC, SSSI and relevant pRamsar site features, including lichens, in its evidence.

## **Invertebrates**

- 6.16 The invertebrate fauna of the SSSI is extremely unusual in a UK context, comprising a range of assemblages of thermophilic (warmth-loving) and wetlands species. The proposals will result in the direct loss of more than 1km of established ditches within the SSSI. These ditches contain assemblages of wetland invertebrates including rare and vulnerable species. The ditches are of very high value for aquatic invertebrates. This is an important SSSI interest feature. The proposed replacement drainage ditches do not provide replacement habitat of sufficient quality or quantity and no evidence has so far been produced that indicates such an interest features could be adequately or effectively replaced. Therefore this important SSSI interest feature will effectively be lost.

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<sup>13</sup> Remke, Eva 2009. Impact of atmospheric nitrogen deposition on lichen-rich, coastal dune grasslands. Ipskamp Drukkers B.V. Enschede.

<sup>14</sup> A workshop entitled "Review and Revision of Empirical Loads and Dose-response Relationships" held in Noordwijkerhout on 23-25 June 2010. The report from this workshop will go to the UNECE Working Group on Effects in Autumn 2010 for approval.

## **Adequacy of information**

- 6.17 Since the submission of the planning applications, Natural England has been advising that LAA has not provided sufficient information in a number of areas. This relates to the effects of the proposals on birds, vegetated shingle and invertebrates, as well as other matters. The information provided to date by LAA remains insufficient.
- 6.18 In deciding whether the proposals should be permitted, under the provisions of the Habitats Regulations the Inspector will, as a matter of law for the SPA and SAC and as a matter of policy for the pSPA, need to follow at least the first three steps outlined in section 3, and one or more of the subsequent steps as appropriate. Due to the concurrence of the Ramsar site designation timetable with the reporting timetable for this inquiry, Natural England advises that these steps should also be applied to the Ramsar site features.
- 6.19 Natural England will submit that the evidence, as submitted to date by LAA, is insufficiently detailed and/or robust to reach with a sufficient degree of certainty a conclusion of no adverse effect upon the integrity of the SPA, SAC, pSPA and pRamsar, or no adverse harm to the interest features of the SSSI. Natural England will explain further in its evidence what areas of information are lacking in relation to the proposals which would be necessary properly to allow the competent authority to undertake an appropriate assessment. LAA has not to date submitted sufficiently robust information to enable the competent authority to undertake an appropriate assessment on all the affected interest features of the SPA, SAC, pSPA and pRamsar site. Further, LAA has not submitted sufficient information fully to determine the effects of the proposals on the SSSI interest features.
- 6.20 Moreover, due to Natural England's concerns over the lack, and inappropriateness, of information in relation to environmental impact assessment, Natural England considers that the environmental statement, with other information submitted by LAA to date, does not meet the requirements of the EIA Regulations and Directive.

## **Other Matters**

- 6.21 In addition to the above, there remain significant unresolved concerns regarding the survey and mitigation proposals for protected species. The proposals are likely to affect habitat supporting European protected species including great crested newts and potentially bats. Further information on the European protected species and in particular on mitigation measures is necessary before the proposals could safely or legally be permitted. In addition insufficient consideration has been given to the impacts of the proposals on species protected under other legislation.
- 6.22 It is in principle possible to impose a legally enforceable framework, such as planning conditions, to prevent the risk of harm from materialising in relation to the following matters:
- (1) the direct loss of aquatic and terrestrial (foraging) habitat of great crested newts, in relation to the SAC, pRamsar and SSSI;

(2) the effects on invertebrates (including in particular moths) of airfield lighting, in relation to the SSSI;

(3) the works to be undertaken at Hammonds Corner.

6.23 However, as yet, LAA has not put forward sufficiently detailed information and/or proposals to enable such a framework to be imposed in this case in relation to these matters. It is hoped that LAA will do this in advance of the inquiry so that Natural England would not have to pursue objections in relation to these matters.

6.24 In addition to direct loss of ditch habitat indirect effects from vegetation community changes resultant from nitrogen deposition could have a range of effects on the invertebrate communities. The types of impacts that could occur include, but are not restricted to, changes in food plant availability, reduction in nectar sources, changes in microclimate as a result of increased shading, increased predator or reduced prey availability and changes in invertebrate habitat structure.

### **Overall position**

6.24 Natural England considers that planning permission for the proposals cannot be granted as a matter of law. Alternatively, Natural England considers that planning permission should not be granted because the relevant development plan and other policy tests would not be met due to the very substantial and unmitigated harm that is likely to be caused by the proposals to ecological interests within national and international designations. There would be a significant impact upon the internationally important wildlife communities near the airport. The development proposals do not protect and enhance biodiversity and ecological interests, do not minimise their negative impacts, do not provide full compensation for the impacts, and will lead to a significant net environmental loss.

## **7. Documents to be referred to by Natural England**

7.1 In addition to the application and policy documents to be referred to by LAA and SDC, Natural England may refer inter alia to the following documents.

### **Legal materials**

EC Council Directive 79/409/EEC on the Conservation of Wild Birds – The Birds Directive

Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora – The Habitats Directive

Conservation (Natural Habitats &c.) Regulations 1994

Conservation of Habitats and Species Regulations 2010

Air Quality Standards Regulations 2010

*Berkeley v Secretary of State for the Environment* [2001] 2 AC 603

*Commission v United Kingdom* ECJ Case C-6/04

*Commission V Portugal* ECJ Case C-293/04

*Landelijke Vereniging tot Behoud van de Waddenzee, Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij* (Waddenzee) ECJ Case C-127/02, [2005] Env LR 14

*Millgate Developments v Secretary of State for Communities and Local Government* [2008] EWHC 1906 (Admin)

*R (Akester) v DEFRA* [2010] EWHC 232 (Admin)

*R (Hart District Council) v Secretary of State for Communities and Local Government* [2008] EWHC 1204 (Admin)

*R (Hillingdon LBC) v Secretary of State for Transport* [2010] EWHC 626 (Admin)

*R v Cornwall CC, ex p Hardy* [2001] Env LR 25

*R (Simon Woolley) v Cheshire East Borough Council* [2009] EWHC 1227 (Admin)

*Smith v Secretary of State for the Environment, Transport and the Regions* [2003] EWCA Civ 262

Appeal decision on Elvington Aerodrome, 14 January 2009 (APP/C2741/A/08/2069665)

Appeal decision on the Proposed Dibden Terminal Application (P89/24/59).

Decision on the Dibden Terminal Application (P89/24/59)

### **Policy and guidance**

PPS1: Delivering Sustainable Development

PPS9: Biodiversity and Geological Conservation

Planning for Biodiversity and Geological Conservation: a guide to good practice (2006)

Circular 06/2005: Biodiversity and Geological Conservation Statutory obligations and their impact within the planning system

DETR, 2000, Ramsar Sites in England – A Policy Statement

DETR, May 1998, The Birds and Habitats Directive: Outline Government Position Statement

Circular 11/95: The Use of Conditions in Planning Permissions

Circular 05/2005: Planning Obligations

Circular 2/99: Environmental Impact Assessment

DCLG, June 2006, *Environmental Impact Assessment: A guide to good practice and procedures*

European Commission, May 1999, *Guidelines for the Assessment of Indirect and Cumulative Impacts as well as Impact Interactions*

European Commission, April 2000, *Managing Natura 2000 Sites: The Provisions of Article 6 of the Habitats Directive 92/43/EEC*

European Commission, January 2007, *Guidance document on Article 6(4) of the 'Habitats Directive' 92/43/EEC* (clarification of the concepts of alternative solutions, imperative reasons of overriding public interest, compensatory measures, overall coherence and opinion of the Commission)

Circular 01/03: The Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002

Civil Aviation Authority CAP 393 Air Navigation: The Order and the Regulations - 3rd Edition Incorporating Amendments to 1/2010, The Stationary Office.

Civil Aviation Authority (2008) CAP 772: Birdstrike Risk Management for Aerodromes. The Stationary Office.

Civil Aviation Authority (2010) CAP 168: Licensing of Aerodromes. 9<sup>th</sup> Edition The Stationary Office.

The Future of Air Transport Progress Report (2006)

The Future of Air Transport White Paper, Cm 6046, December 2003

Highways Agency, March 2005, *Interim Advice Note 61/05 Guidance for Undertaking Environmental Assessment of Air Quality for Sensitive Ecosystems in Internationally Designated Nature Conservation Sites and SSSIs* (Supplement to DMRB 11.3.1)

### **Case-related material**

Correspondence between Natural England and the Applicants

Correspondence between Natural England and Shepway District Council

Natural England, various dates, the citations and maps of the national and international nature conservation designations including the proposed designations  
English Nature (2006) Dungeness Romney Marsh and Rye Bay SSSI Citation and Map

English Nature (2006) Dungeness Romney Marsh SSSI, Supporting Information

## Research and other documents

AEA Technology, Report AEAT/R/ENV/0311 (November 2000. NEGTA, 2001) *Transboundary Air Pollution: Acidification, Eutrophication and Ground-Level Ozone in the UK. Report prepared by the National Expert Group on Transboundary Air Pollution* on behalf of the Department for Environment, Food and Rural Affairs, The Scottish Executive, The National Assembly for Wales and the Department. ISBN 1 870393 61 9.

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**Annex A**  
**Designated Sites, Citation and Maps**

## Annex B

### Proposed Provisional Designation Timetable for the Dungeness Romney Marsh and Rye Bay pSPA and pRamsar sites.

<b>Stage</b>	<b>Procedure</b>
Formal consultation commencement	16 <sup>th</sup> September 2010
Formal consultation closes	13 <sup>th</sup> December 2010
Formal consultation response written	December 2010 – January 2011
Submission of package to Defra by Natural England	31 <sup>st</sup> January 2010
Decision by Ministers	Earliest July 2011 but could be later