

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATIONS BY LONDON ASHFORD AIRPORT LIMITED

SITE AT LYDD AIRPORT, LYDD, ROMNEY MARSH, KENT

NATURAL ENGLAND'S
OPENING STATEMENT

Introduction

1. Romney Marsh is sometimes described as the fifth continent, after the Reverend Richard Barham wrote in *The Ingoldsby Legends* in the early 1800s that “The World, according to the best geographers, is divided into Europe, Asia, Africa, America, and Romney Marsh”. Dungeness Point is mentioned in particular, as one of the most remarkable places in this remarkable area. Dungeness is today one of the finest and most important sites for the conservation of biodiversity in the UK. This is recognised in the number of national and international existing and proposed designations covering in part or lying very close to the airport.
2. The designation citations describe the diverse range of biological and geological features found in the area, including the coastal geomorphology of Dungeness and the complex of habitats including vegetated shingle, water bodies, wetland habitats, and lowland ditch systems. Some of the notable features of the designated sites include both rare species and the overall assemblage of aquatic invertebrates, including medicinal leech for which this area is a stronghold in Britain, other species associated with wetland habitats such as water voles and great crested newts, as well as, in contrast, vegetated shingle with extensive lichen heath communities.

3. The area is noted in particular for its assemblages of both breeding birds and water birds in the non-breeding season. The species of birds which feature in the various designation citations include Bewick's swan, mute swan, white-fronted goose, golden plover, lapwing, bittern, various species of duck, including shoveler, marsh harrier and hen harrier.
4. It is into this most sensitive of contexts that the Applicant seeks to introduce its development proposals.

Ornithological interests

5. The Dungeness peninsula is internationally recognised for its populations of birds. In this location, rich as it is with birds, there would be an inherent juxtaposition of birds and large passenger aircraft. The Applicant's assessment is that, without increased bird control and management, there would be unacceptable bird strike risks. The Applicant's risk management strategy is to reduce the probability of bird strikes by removing birds from the vicinity of the aircraft. This must be done not only over the airport itself, but also from the vulnerable airspace in the flightpaths.
6. The Bird Hazard Risk Assessment has been prepared by the Applicant to inform the priorities of the subsequent Bird Control Management Plan (BCMP). But the information necessary properly to understand the distribution and movement of birds around the airport is absent and the risk cannot therefore be assessed robustly. The risk assessment is flawed. It substantially under-estimates what would be required to maintain safety.
7. There is no dispute that it is in principle possible for an expanded Lydd airport to operate safely. The intensity of bird control interventions can simply be increased to a level where that occurs. The issue is what intensity of intervention is necessary and what the impacts of that would be. The BCMP contains a long list of bird management interventions. But neither that document, nor any other, tells us where and to what extent these interventions

will have to be applied. No document properly assesses the environmental impacts of those interventions, and nor could it when their scale and range are not considered.

8. Birds are obviously highly mobile and are not confined to the designated sites, such as the designated waterbodies. In fact, there are regular movements of birds roosting or resting on the designated waterbodies and then flying out to the surrounding agricultural land to feed or to other nearby waterbodies. The land outside the European sites – the grassland, arable fields, wetland areas and other waterbodies – play a vital role in maintaining the populations of birds found in the European sites. It is essential, functionally-linked, supporting habitat.
9. Where flights of hazardous birds occur over the airport and its vulnerable airspace, those flights would have to be deterred. That would have to be done by intervening at one end or the other, to remove the attraction or to scare birds away, so as to stop the flights or to amend them to keep them out of the vulnerable airspace. The airport and its immediate flightpaths effectively separate SPA/pSPA areas, including the RSPB Reserve and the Lade Pits, from their inland surroundings.
10. The various effects of the bird control and land and habitat management effort will combine and act in concert to have an overall impact on the ornithological interests in the area. There would be a reduction in the habitat available for birds, through changed agricultural and land management practises, habitat management, netting water bodies, a buffer zone around the airport, reduced conservation work and safeguarding objections. There would also be increased disturbance, from on and off-airport bird control and air traffic movements.
11. This overall, combined impact would affect the factors which contribute to the functioning of the European sites' ecosystem, affecting key relationships in the environment which go to create the structure and functioning of the sites. No mitigation is proposed for this impact. Beyond that, it is important to note

that there would be damage to the ornithological special interest features of the SSSI as well.

12. The combined impact of the operation of the expanded airport on important ornithological interests would be significant. The proposals must therefore be subject to appropriate assessment and environmental impact assessment, but that cannot be done on the basis of the information provided by the Applicant. In particular, it cannot be ascertained that the proposals will not have an adverse effect on the integrity of the European sites because those effects are uncertain. As a result, planning permission for the proposals cannot be granted as a matter of law.
13. The Applicant's case appears now to be that this off-airport bird control and land and habitat management – and safeguarding actions – would have to be done in any event, even if the planning applications were refused. That proposition is not accepted. It does not happen at the moment and would not be required absent a very substantial change in activity at the airport.
14. Nor is it accepted in any event that it is appropriate to judge the impacts of the proposals against the circumstances which the Applicant promotes as the fallback position. The fallback position is only hypothetical. Given the practical constraints, and the legal constraints under the Habitats Regulations, the fallback position does not have a realistic prospect of occurring. The proposals must be judged against the existing baseline.
15. The Applicant also states its willingness to consult with Natural England before undertaking off-airport bird control and land and habitat management activities, but that would not go very far at all. Once the expanded airport was operational, public safety would have to take precedence. Nature conservation considerations could not then be expected to prevail against public safety under a consultation arrangement like that proposed.
16. The control Natural England would have over the Applicant's bird hazard management activities would be limited. Whilst a new BCMP or formal (but

non-statutory) safeguarding arrangement prepared by the Applicant would have to be subject to appropriate assessment under the Habitats Regulations, and some provisions of the Wildlife and Countryside Act 1981 would apply in relation to the SSSI, Natural England would have little control over what could be done. This is another reason why it is fundamentally important properly to assess the ecological impacts of the expansion at this stage.

Vegetated shingle and nitrogen deposition

17. A substantial concern of Natural England's has been the effect of the airport's expansion on the important vegetation communities – in particular lichens – which make up the vegetated shingle in the SAC and SSSI. These are internationally important features of Dungeness. The vegetated shingle is a nutrient-poor habitat and the increased deposition of nitrogen would be likely to affect the lichens and other shingle vegetation.
18. Natural England's position on nitrogen deposition was set out in its letter dated 10 December 2010. Following the release by the Applicant of air quality modelling information to Natural England's consultants in October 2010, discussions between consultants were held and various checks on the modelling inputs and processes were carried out. The results are recorded in a report from Atkins and a statement of common ground dated January 2011. The outcome of that process has been to narrow the areas of uncertainty.
19. There was also a review of the critical load benchmark used for the vegetated shingle habitat at Dungeness, which led to its revision from a range of 10-20 kgN/ha/yr to a level of 10 kgN/ha/yr, and further study work carried out on the lichen communities. The outcome of the Atkins work was the prediction of nitrogen deposition levels which were higher than those assessed by the Applicant. For example, using the 300,000 passengers per annum scenario, the Applicant predicted that nitrogen deposition at the SAC in 2012 would be between 9.3 and 9.6 kgN/ha/yr. Atkins calculated this to be 9.79 kgN/ha/yr. But it is accepted that it would be below the 10 kgN/ha/yr critical load.

20. As a result, it is accepted that nitrogen deposition arising as a result of the proposals is unlikely to affect the integrity of the SAC. Similarly, it is accepted that it is not likely that there will be significant damage to the same in the SSSI. However, this position depends on the operation of the expanded airport remaining within the parameters on the basis of which it has been assessed. That is not certain to happen without adequate conditions being imposed. Without such conditions, uncertainty remains about the effects of the airport's expansion on the vegetated shingle. Natural England considers that planning permission should only be granted subject to satisfactory conditions, to avoid the remaining uncertainty by ensuring that the expanded airport operates within the parameters assessed.

Grazing marsh ditches

21. The proposals include the loss from the SSSI of old and well-established marsh drainage ditches on a scale which appears to be unprecedented. Most of the ditches are at least 120 to 150 years old. Around 800m of these ditches will be lost to the development. This is particularly important because of the rare assemblage of aquatic invertebrates which live in these well-established ditches. The ditch systems and invertebrates – both individual species and the assemblage – are a feature of the SSSI. The ditches which would be lost rank alongside some of the best grazing marsh ditch systems in the UK in terms of conservation importance.

22. Whilst the proposals include some 1,300m of new drainage ditches, they will not provide a suitable replacement for the high value invertebrate assemblage in the well-established ditches which would be lost. The new ditches are designed as drainage ditches as part of the airport's surface water drainage strategy. The new drainage ditches are uniform in design and contain little structural variety. The result would be uniform conditions in the new drainage ditches, with far fewer niche habitats, and therefore less variety in the invertebrate assemblage. The new ditches would also offer considerably

different conditions. They would have a higher flow, be deeper and hold a greater volume of water, which in turn would affect other conditions like water temperature. The ditches might also have to be netted for bird control purposes. If that is done, it will affect the presence of birds, which provide an important source of warm blood for the medicinal leech. Overall, it is unlikely therefore that the new drainage ditches could offer a true replacement for the habitat lost.

23. Even if the ditch conditions could be re-created to some extent by the new drainage ditches, the invertebrate assemblage would take a considerable period to reach the same kind of maturity as the ditches which are being lost. It would take much longer than suggested by the Applicant before the invertebrate assemblage matured sufficiently to be comparable to that lost – even if that were possible where 800m of ditches which are at least 120 to 150 years old are to be replaced by 1,300m of new drainage ditches with few of the same characteristics.

Other ecological concerns

24. The absence of adequate environmental information in this case is a very real problem. As matters stand, it is not possible properly to assess all the environmental impacts of the proposals. Nor is it appropriate to leave so much by way of surveys and the preparation of mitigation proposals until after the grant of planning permission, to be dealt with under conditions. That information should be available now. It should not be left until after the grant of permission.
25. This issue relates not only to the effects of the proposals on ornithological interests and the ditches, but also important European protected species such as great crested newts – which are also features of the SAC, SSSI and pRamsar – as well as other protected species such as medicinal leech, water voles and reptiles. These points may come under the heading of other

ecological concerns, but they are substantial concerns which would be enough on their own to prevent planning permission being granted.

Overall conclusions

26. There are firm legal impediments to the grant of planning permission for the proposals before the inquiry. But beyond that, the environmental impacts of the proposals are such that, even if permission could be granted, it should not be granted. The site-specific development plan policy only allows development where there would be no significant impact on the internationally important wildlife communities in the area. The policy relating to Dungeness gives priority to that flora and fauna over other planning considerations. Beyond that, there is a raft of development plan and national policy which requires ecological interests to be both protected and enhanced, adverse impacts to be minimised, and residual impacts to be subject to mitigation or compensation. The airport expansion proposals fail these fundamental tests and should not be permitted.

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