

Our ref: 040205/RM
Your ref: Y06/1647/SH & Y06/1648/SH



Kent Wildlife Trust
Tyland Barn
Sandling Maidstone
Kent ME14 3BD
Tel: (01622) 662012
Fax: (01622) 671390
info@kentwildlife.org.uk
www.kentwildlifetrust.org.uk

8 November 2007

Mr T Ellames
Shepway District Council, Planning and Building Control
Civic Centre
Castle Hill Avenue
Folkestone
Kent CT20 2QY

Dear Mr Ellames

London Ashford Airport: erection of terminal building; construction of runway extension

1. Thank you for consulting Kent Wildlife Trust on the above planning applications. The Trust very strongly **objects** to each of the planning applications, for reasons which are set out below, and which, except where specifically indicated, apply equally to both applications.
2. A great deal of detailed and complex information has been presented as part of the two planning proposals, and the implications of much of this has been discussed in an earlier submission by Kent Wildlife Trust and other environmental bodies. The Trust's earlier submissions still apply, and the comments below should be seen as complementing them.
3. The complexity and volume of information supplied in support of the proposals should not blind the Planning Authority to the very clear planning issues which must form the basis for determination of this application. The importance of Dungeness for biodiversity cannot be overstated. As a physical structure it is unique in Europe and probably the world, and it supports one species (one of only a handful of UK endemic species) which has been found nowhere else on the planet. The habitats and populations of wild species which Dungeness supports are nationally and internationally important, and, as a result, the area is protected in law and by regional, county and local planning policies. Because of the importance of the wildlife habitats of Dungeness, you should not grant permission for either of the current planning proposals unless the developers are able to:
 - 3.1. Demonstrate, beyond reasonable doubt, that the proposals would not harm the protected sites of Dungeness, including their associated habitats and populations of wild species; *or*
 - 3.2. Demonstrate, beyond reasonable doubt, that the benefits associated with the development are of sufficient public interest to outweigh the importance of the site, that there are no alternatives which would provide the same public interest benefits, *and* that any damage caused can be fully compensated (see PPS9 and its associated circular).
4. Particularly in the case of the SAC and SPA, the onus is on the developer to demonstrate that there would be no harm to the integrity of the designated sites, and not on objectors to



A company limited by
guarantee no. 633098
Vat reg. no. 204 7991 54
Reg. charity no. 239992

Protecting **Wildlife** for the Future

demonstrate that harm would be likely. Further, it is not possible for developers to propose, as has been done here in respect of certain potential impacts, that action could be taken retrospectively to compensate for any harm to the European sites which might be identified through monitoring subsequent to the development. Firstly, this presupposes a likelihood of significant harm which needs to be assessed as part of the determination of the applications, and, secondly, there is no provision in the Habitats Directive for retrospective compensation.

5. It is the Trust's argument that, even without consideration of the minutiae of, for example, air pollution impacts, it is clear that:
 - 5.1. The proposals would be likely to have a significant impact on the SAC, the SPA, the SSSI, and associated species of importance.
 - 5.2. It has not been shown that the proposals would not damage the integrity of the SAC, the SPA and the SSSI.
 - 5.3. It has not been demonstrated that there are no alternative methods for delivering the benefits that would potentially arise from the planning proposals.
 - 5.4. It has not been demonstrated that the need for the development is of sufficient public interest to override the national and international importance of the biodiversity interest of Dungeness.
 - 5.5. It has not been demonstrated that appropriate compensation could be delivered for any damage to the area's biodiversity interest.
 - 5.6. The proposals would not result in the conservation and enhancement of biodiversity, and therefore conflict with PPS9.
6. In addition, it is clear that:
 - 6.1. The proposals would make it difficult, if not impossible, to successfully deliver policies in the draft South East Plan.
 - 6.2. The proposals would lead to a significant increase in carbon emissions, contrary to broad government policy and to policies in the draft South East Plan.
7. These issues are dealt with in more detail below.

Harm to the SAC

8. The statement to inform on the predicted impacts of the proposed runway extension states that:

‘Construction impacts are predicted to cause a moderate impact on the SAC, since the runway extension and its clear and graded perimeter would ingress into the SAC site, resulting in a small loss in SAC designated land.’
9. The document then goes on to suggest that this impact can be mitigated by habitat creation or enhancement either within or outside the existing SAC. Unfortunately, this is based on a misunderstanding of the term ‘mitigation’ in the meaning of the European Habitats Directive. Guidance on implementation of Article 6 of the Directive (‘Managing Natura 2000 Sites – the provisions of Article 6 of the Habitats Directive 92/43/CEE’, published by the European Commission, ISBN 92-828-9048-1) states:

‘As regards mitigation measures, these are measures aimed at minimising or even cancelling the negative impact of a plan or project, during or after its completion.’

‘Mitigation measures are an integral part of the specifications of a plan or project. They may be proposed by the plan or project proponent and/or required by the competent national authorities. For example, they may cover:

- the dates and the timetable of implementation (e.g., not to operate during the breeding season of a particular species);
- the type of tools and operation to be carried out (e.g., to use a specific dredge at a distance agreed upon from the shore in order not to affect a fragile habitat);
- the strictly inaccessible areas inside a site (e.g., hibernation burrows of an animal species).

‘Mitigation measures are distinguishable from compensatory measures *sensu stricto*. Of course, well-implemented mitigation measures limit the extent of the necessary compensatory measures by reducing the damaging effects which require compensation.’

10. In respect of compensation, the guidance states:

‘The compensatory measures constitute measures specific to a project or plan, additional to the normal practices of implementation of the ‘Nature’ directives. They aim to offset the negative impact of a project and to provide compensation corresponding precisely to the negative effects on the species or habitat concerned. The compensatory measures constitute the ‘last resort’. They are used only when the other safeguards provided for by the directive are ineffectual and the decision has been taken to consider, nevertheless, a project/plan having a negative effect on the Natura 2000 site.’

11. So it is clear that, in this case, ‘mitigation’ might be, for example, reducing the amount of SAC land taken by the development. Replacement or enhancement of habitat to make up for any damage caused is actually ‘compensation’ in the meaning of the Habitats Directive, and, as such, can only be considered once it has been established that there are no alternatives to the development proposal and that it must be carried out for imperative reasons of overriding public interest. The timing of the provision of any compensation is also critical; in this respect, the EC guidance states ‘The result has normally to be operational at the time when the damage is effective on the site concerned with the project unless it can be proved that this simultaneity is not necessary to ensure the contribution of this site to the Natura 2000 network.’

12. The information supplied to support the planning application suggests that the impacts upon the SAC of air pollution arising from the planning proposals are not significant. In drawing this conclusion, reliance is placed upon declines in background nitrogen deposition. However, this fails to recognise that:

12.1. There is an obligation upon European member states to avoid deterioration of European sites, and this would include removing such causes of deterioration as aerial pollution. UK government policy on air pollution recognises the impacts of pollution upon natural habitats, and reducing this impact is one of the drivers for seeking reductions in emissions.

12.2. If the proposals result in an increase in nitrogen deposition above background levels, whether or not these background levels are declining, then that would constitute an impact upon the SAC. Quite clearly, the purpose of government (and international) activity to reduce diffuse sources of nitrogen oxides is not just to provide ‘headroom’ for new sources of pollution: it is to remove sources of environmental harm, particularly where these may affect a site for which the UK has international obligations.

12.3. There is some doubt as to whether background nitrogen deposition will remain low in the long term. In the 2004 White Paper, ‘The Future of Transport’, it is stated:

‘Over the last decade air quality has improved significantly and our projections to 2015 suggest that these trends will continue. However, the downward trend in emissions of two of the pollutants, nitrogen dioxide (NO₂) and particles (PM₁₀), is likely to level off and *could start rising again after 2015 unless further action is taken* [my italics]. And there are parts of the UK where levels of NO₂ and PM₁₀ remain above the limits set by the EU and in our Air Quality Strategy for 2010. These limits reflect the Government's aim to protect people's health and the environment. Our policies will help us to achieve the required improvements in many of these areas, but there will be a small number where, on the basis of current policies, levels will still be exceeded by 2010. If future road and air traffic flows exceed expectations, or emission control technologies fail to deliver anticipated reductions, the challenge we face will increase.’

13. Further, there is insufficient clarity in the documents supporting the planning proposals concerning critical loads. The documents refer to predicted rates of deposition being ‘within’ the critical load range, or as ‘not exceeding’ the critical load range. The APIS website defines ‘critical load’ as ‘a quantitative estimate of 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’. Therefore, the way in which critical load estimates are used in the planning documents (that is, to suggest that damaging impacts are unlikely so long as the critical load range is not exceeded) is incorrect; rather, the only conclusion which should be drawn is that it is unlikely that damage will occur providing that pollutants remain *below* the critical load. Once pollution loads enter the estimate critical load range, it is reasonable to infer that some damage is likely to occur, and that both the risk and severity of damage are likely to increase as values reach the higher end of the critical load range.
14. The projections for nitrogen deposition provided in the planning documents must therefore be seen as showing that both the terminal and runway planning applications would have an impact on the SAC. The question which must then be addressed is whether this impact is significant.
15. The guidance on implementing Article 6 of the Habitats Directive states that:

‘The notion of what is ‘significant’ needs to be interpreted objectively. At the same time, the significance of effects should be determined in relation to the specific features and environmental conditions of the protected site concerned by the plan or project, taking particular account of the site’s conservation objectives.’
16. Figure 2.3 in the report on nitrogen deposition arising from the runway application shows that the proposal would increase deposition over more than 2% of the SAC and over more than 4% of all the vegetated shingle in the SAC (using data in the Kent Habitat Survey). Figure 2.3 in the paper on nitrogen deposition associated with the terminal application is rather confusing, showing apparent reductions in deposition, even though Figure 2.4 clearly shows that an increase in passenger numbers would result in greater nitrogen deposition. Whatever the detailed figures, it is abundantly clear that the proposals for aviation expansion at Lydd, taken singularly or together, constitute a plan which, in combination with other impacts (i.e. background diffuse pollution), would result in nitrogen deposition on at least part of the SAC being at a level where damage would be likely to occur to the vegetated shingle.
17. Using the developers’ own matrix for determination of impacts upon a Natura 2000 site, this would translate into an impact of ‘moderate’ significance, i.e. it ‘represents a potentially significant impact that requires careful individual assessment. Such an impact could warrant planning refusal, but it may be of a scale that can be resolved by revised design or appropriate mitigation’.

18. No mitigation (i.e. no measures to reduce nitrogen deposition within the SAC) is offered as part of the planning proposals, and, indeed, it is hard to see how this might be achieved. Therefore, neither planning proposal can be approved unless it can be established that there are no alternatives to the proposed developments and that they must be carried out for imperative reasons of overriding public interest. It is clear that a development such as that proposed for Lydd Airport, which is, at best, of county-level significance, cannot be considered to constitute public interest sufficient to override the protection for a site of international importance.
19. It is still of concern to the Trust that no attention has been paid to ozone pollution, since operation of the proposed developments would undoubtedly give rise to increased local ozone concentrations, ozone is known to be damaging to vegetation, and local ozone thresholds are already being exceeded. It is difficult to see how the proposals will meet the requirements of the Habitats Directive without considerably more information being given on likely ozone impacts.
20. Likely impacts of the proposals upon the SPA are still unclear. The Bird Control Management programme includes measures to deter species (including species for which the SPA is important) from using agricultural land around the airport, and it is stated that this ‘may reduce adjacent habitat value for golden plover’. Yet no clear indication is given whether these sorts of measures would affect the integrity of the SPA, and no mitigation is offered. The suggestion that any impacts which do occur can be dealt with after the event (‘However, a general mitigation is recommended that the efficacy of this revised BCP is tested for its impact on the conservation species by implementing a specific monitoring programme for the SPA-listed species ... If it can be demonstrated that any of the species are being negatively affected by bird control methods, then management intervention should be implemented to reverse this.’) appears to suggest retrospective compensation for impacts upon the SPA and therefore to be entirely contrary to the provisions of the Habitats Directive.
21. Further, the draft Bird Control Management Programme states: ‘Wherever possible, in addition to surveillance of the airfield, the BCT should actively look for concentrations of hazardous birds in the fields immediately adjacent to the airport perimeter and disperse them when it is safe to do so. This will increase the amount of time required for these birds to encroach onto the airfield, creating a “buffer zone” *several hundred metres wide* [my italics] around the perimeter.’ This suggests very strongly that bird control will include scaring of birds within the SPA, and no information is offered by the developer to counter this suggestion.
22. It therefore remains clear that the proposals are likely to have a significant impact upon the SPA, and the developers have not been able to show that either planning proposal would not adversely affect the integrity of the site. It is of particular concern that detail is not given of the extent of the area which would be affected by efforts to deter birds around the airport, either directly or indirectly, nor of how this would affect populations of birds for which the SPA is designated. That the information provided is insufficient is made clear by reference to the Civil Aviation Authority’s guidance on Bird Control Management Plans which, for example, states that such a Management Plan should provide detail of the means to be employed to help encourage landowners to adopt bird control measures and to support landowners’ efforts to reduce birdstrike risks.

Harm to the SSSI

23. There is nothing in the additional information to suggest that likely impacts on the SSSI would be any different to that suggested by the original planning documents. It would still be likely to include:

- 23.1. Damage to vegetated shingle communities arising from increased aerial pollution (nitrogen and ozone), leading to community changes likely to be detrimental to important lichen communities. (NB, reference, in the 'statements to inform', to ecophysiological impacts on lichens are not strictly relevant: the primary impact upon lichens is likely to arise from community changes resulting from the response of vascular plant species to increased nitrogen deposition).
 - 23.2. Changes to plant-insect interactions as a result of continued/increased nitrogen deposition (a documented phenomenon) with potentially serious, detrimental impacts upon endemic species or subspecies.
 - 23.3. Damage to populations of rare and threatened plant species, including s74 species of principle importance for the conservation of biodiversity in England, as a result of community changes arising from continued/increased nitrogen deposition.
24. In addition, it is clear that the runway proposal would result in the direct loss of ditches supporting nationally important invertebrate assemblages. Applying the Community Conservation assessment method of Chadd and Extence (Chadd, R. & Extence C. 2004. The conservation of freshwater macroinvertebrate populations: a community-based classification scheme. *Aquatic Conservation: Marine and Freshwater Ecosystems* 14:597-624) to the survey results given in the invertebrate survey of drainage ditches shows that the ditches surveyed are nationally important in their own right. No evidence is provided to support the idea that ditches of similar quality could be created elsewhere in order to compensate for this loss, nor is it indicated how long such a process might take.
25. It is of great concern to the Trust that detailed studies showing the distribution of s74 species have not been carried out in order to assess potential impacts. Further studies which might also be required to inform impact assessment would also include plant-insect interactions under different nitrogen regimes for species such as the UK (and Dungeness) endemic *Aphrodes duffieldi*.
26. In the absence of evidence to the contrary, it is therefore reasonable to assume that the proposals, both individually and together, are likely to cause material harm to the interest features of the SSSI, since:
- 26.1. They will cause nitrogen deposition to increase or at least remain high over a significant portion of the site's vegetated shingle.
 - 26.2. There is no information to indicate that the proposals will not impact adversely on plant and invertebrate species associated with the vegetated shingle.
 - 26.3. There will be loss of ditches supporting nationally important invertebrate assemblages, and it is unclear how widespread such assemblages are within the SSSI as a whole.
27. The planning proposals therefore fail the following tests
- 27.1. **PPS9**: 'Where a proposed development on land within or outside a SSSI is likely to have an adverse effect on an SSSI (either individually or in combination with other developments), planning permission should not normally be granted.'
 - 27.2. **Kent and Medway Structure Plan, Policy EN6**: Development will not be permitted where it would directly, indirectly or cumulatively, materially harm the scientific or nature conservation interests of ... a Site of Special Scientific Interest.

28. The next test is therefore whether the development is of overriding public importance. Clearly, the conservation of a SSSI is of national importance, while the exclusion of any policy in the South East Plan relating to Lydd Airport shows that the development proposals are not even of regional importance. Shepway District Council may consider that the proposals are of importance for the provision of local employment, however, and in assessing the planning proposals, the Council will need to be able to assure itself of the following:

28.1. **That the employment opportunity is of a scale sufficient to warrant an argument in favour of damage to a site of national importance.** It would be extremely difficult to sustain such an argument without much more detailed information on the scale of the impact upon the interest features of the SSSI, and, it can be argued, without a more thorough analysis of the impacts of the proposals upon local tourism, particularly given the significance of the tourism industry for local employment. The Trust does not have direct expertise in the economics of tourism, but the following questions occur in relation to the potential tourist benefits presented in the planning documents:

- Is it realistic to use tourist spend in the West Country as a basis for projected spend by tourists entering the UK via Lydd? Tourism in the West Country is likely to be based on different factors to tourism in Kent (not least the West's relative tranquillity).
- The bulk of staying visitors in Shepway are apparently from the UK: how many of these would be put off by a busy airport, particularly given that the busiest periods for the airport would coincide with the current busiest periods for local tourism?
- How many tourists that currently visit Shepway would use availability of an expanded local airport to go abroad instead? It is, after all, well documented that international tourism results in a net loss of income to the UK: why should the same not apply to Shepway?
- Is there a 'critical mass' for the local tourist industry? Would even a relatively small reduction in, for example, bookings at a particular caravan park, be sufficient to make the whole park uneconomic?
- Is the absence of opportunities to fly straight in really the most important barrier to increasing tourism in Shepway and the rest of Kent, or could other investment (e.g. in environmental quality) bring bigger returns in terms of visitor numbers, their length of stay, and the spend per capita?

28.2. **That there are demonstrably no alternatives to the two development proposals.**

Manston Airport, which is the favoured international airport for Kent, and is only a short distance from Shepway, would appear to offer a clear alternative for the provision of an international airport on this side of London, and has better transport connections. Given the scale of the likely employment gain offered by Lydd Airport, it would seem hard to argue that there are no alternative approaches which might deliver similar levels of employment.

28.3. **That the loss or damage caused to the SSSI could be adequately compensated.** The developers offer no adequate proposals in this respect, and, given that Dungeness is considered globally unique, and supports species found nowhere else in the world, it would be surprising if any meaningful compensation could ever be provided.

29. Both planning proposals therefore fail the following tests:

29.1. **PPS9:** 'The aim of planning decisions should be to prevent harm to biodiversity and geological conservation interests. Where granting planning permission would result in significant harm to those interests, local planning authorities will need to be satisfied that

the development cannot reasonably be located on any alternative sites that would result in less or no harm. In the absence of any such alternatives, local planning authorities should ensure that, before planning permission is granted, adequate mitigation measures are put in place. Where a planning decision would result in significant harm to biodiversity and geological interests which cannot be prevented or adequately mitigated against, appropriate compensation measures should be sought. If that significant harm cannot be prevented, adequately mitigated against, or compensated for, then planning permission should be refused.'

29.2. **Kent and Medway Structure Plan, Policy EN8:** 'Development likely to have an adverse effect, directly, indirectly or cumulatively, on important habitats or species will not be permitted unless there is an overriding need for the development that outweighs adverse impact on nature conservation; and adverse impact on an important nature conservation resource can be adequately mitigated and/or compensated.'

29.3. **Shepway Local Plan, Policy CO9:** The District Planning Authority will not permit development in or near Sites of Special Scientific Interest or the Dungeness National Nature Reserves, which would adversely affect their wildlife or scientific interest unless there is an exceptional need for the development which overrides the national or regional value of the designation and measures will be taken to minimise impacts and fully compensate for remaining adverse effects.

29.4. **Shepway Local Plan, Policy CO11:** The District Planning Authority will not give permission for development if it is likely to endanger plant or animal life (or its habitat) protected under law and/or identified as a UK Biodiversity Action Plan priority species or cause the loss of, or damage to, habitats and landscape features of importance for nature conservation, unless there is a need for development which outweighs these nature conservation considerations and measures will be taken to minimise impacts and fully compensate for remaining adverse effects.

Conflict with Regional Planning Policy

30. The planning proposals would conflict with two key regional planning policies.

31. **Policy CC2** seeks a significant reduction in the Region's carbon footprint. The Trust has calculated that the expansion of the airport to accommodate 500,000 passenger movements a year could be expected to generate carbon emissions equivalent to more than 6% of existing household emissions from Kent. Our method of calculation is given at the end of this document.

32. **Policy NRM4** of the South East Plan states:

'In the development and implementation of plans and strategies, local authorities and other bodies shall avoid a net loss of biodiversity, and actively pursue opportunities to achieve a net gain across the region by ... Ensuring appropriate access to areas of wildlife importance, identifying areas of opportunity for biodiversity improvement and setting targets reflecting those in figure NRM2. Opportunities for biodiversity improvement, including largescale habitat restoration, enhancement and re-creation in the areas of strategic opportunity for biodiversity improvement (Map NRM4) should be pursued'

33. Romney Marsh is clearly identified in Map NRM4 as an area of strategic biodiversity improvement for wetland habitat. However, achievement of this policy would be difficult, if not impossible, should the Lydd Airport proposals be approved, since the draft Bird Control Management Plan specifically identifies wetland creation schemes as a source of bird hazard

concern, and states that the airport's safeguarding policy would strive to avoid any increase in the bird hazard to aircraft operating at Lydd Airport.

Yours sincerely

A handwritten signature in black ink that reads "Richard Moyse". The signature is written in a cursive style with a large, sweeping initial 'R'.

Richard Moyse
Head of Conservation and Policy

Appendix: Calculating potential carbon emissions from an expanded Lydd Airport

- i. According to a memorandum submitted by the Aviation Environment Federation to the Parliamentary Select Committee on Environmental Audit, Virgin Atlantic flights generate 0.130 kg CO₂ per revenue passenger kilometre (<http://www.publications.parliament.uk/pa/cm200607/cmselect/cmenvaud/227/227we19.htm>). This is lower than the average of 0.330 kg CO₂ per passenger kilometre for short haul flights, quoted by the TUC in their evidence to the same Select Committee (<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmenvaud/981/981we65.htm>), but higher than the figure claimed by easyJet of 95.7g CO₂ per passenger kilometre. To be fair, we have used the mean of these three figures, which is 0.185 kg CO₂ per passenger kilometre.
- ii. If the average flight from Lydd Airport is 1000km (equivalent to a one-way flight to Milan or Marseilles, and between one-half to one-seventh of the operational range of the aircraft which would fly from an expanded Lydd Airport), then the total distance flown by the 524,870 passengers which the airport says would pass through Lydd each year would be 524,870,000 kilometres.
- iii. Using the Virgin Atlantic figures for carbon emissions on their flights, this number of passenger kilometres equates to 97,233 tonnes of CO₂.
- iv. Average production CO₂ by a home in the UK is around 4.5 tonnes, so that 97,233 tonnes of CO₂ is equivalent to the annual emissions from 21,605 homes.
- v. However, emissions by aircraft are considered to be more damaging because they are emitted at high altitudes. The Aviation Environment Federation states that:

“Aviation's impact on the climate is worsened by the fact that the polluting emissions happen largely high up in the atmosphere. Here they can do more damage, with not only CO₂ but also water vapour and nitrogen oxides having an effect, with the whole referred to as radiative forcing.

“In total, the Intergovernmental Panel of Climate Change estimates that the warming effect of aircraft emissions is about 1.9 times that of carbon dioxide alone, due to the other gases produced by planes. (A higher figure of 2.7 was previously used, but a more conservative one of 1.9 is now preferred, and is the one commonly used).”

(<http://www.aef.org.uk/downloads/Howdoesairtravelcompare.doc>)
- vi. Therefore, to offset the impact of aircraft emissions, we would need to reduce ground-level carbon dioxide emissions by 1.9 x 97,233 tonnes, i.e. 184,743 tonnes CO₂. The government's National Statistics website (<http://www.statistics.gov.uk/>) shows that there are around 600,000 households in Kent, giving a combined annual carbon emission of 2,700,000 tonnes CO₂. 184,743 tonnes CO₂ represents 6.8% of this total.