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# Appeal Decision

Hearing held on 20 June 2023

Site visit made on 20 June 2023

**by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 3<sup>rd</sup> July 2023**

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**Appeal Ref: APP/X2220/W/23/3314870**

**Manor Farm, Willow Woods Road, Little Mongeham, Kent CT14 0HR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
  - The appeal is made by Mr R Ledger against the decision of Dover District Council.
  - The application Ref 21/00626, dated 16 April 2021, was refused by notice dated 14 October 2022.
  - The development proposed is change of use of land to an airfield to include a runway, helipad, erection of 2no. aircraft hangars, flight office and toilets, workshop/plant storage building, glamping for 10no. pitches, associated parking and a vehicular access track.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. An application for costs was made by Mr R Ledger against Dover District Council. This application is the subject of a separate Decision.

## Main Issues

3. The main issues are the effects of the development on:
  - the integrity of the Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Ramsar (collectively 'the habitats sites'); and
  - the living conditions of occupants of nearby dwellings in relation to noise and disturbance.

## Reasons

### *Habitats sites*

4. The habitats sites lie a little under one mile from the appeal site. These are designated on account of the important populations of bird species that they support, comprising Golden Plover, Turnstone and Little Tern. A slightly broader range of birds are additionally noted in relation to the underpinning Sites of Special Scientific Interest. The conservation objectives of the SPA seek to maintain or restore integrity of its qualifying features, including the supporting habitat.

5. The birds which use the habitats sites are vulnerable to disturbance, and the underlying habitat vulnerable to degradation. Each can arise through recreational activities.
6. The proposed airfield has been presented as a replacement for the now closed Maypole Airfield. This was located just to the northeast of Canterbury, a drive of around 16 miles from the site. As such, notwithstanding the suggestion by interested parties that some other small airfields in Kent have been expanded since, the proposal concerns replacement rather than new capacity. Within this context the 20 aircraft that would be based at the proposed airfield are most likely to already be in existence, and already based elsewhere in Kent. Such aircraft are likely to include those previously based at Maypole Airfield. In the absence of any existing control, and given the extent of the coastal area designated, such aircraft could in the past, and could at present occasionally overfly both the habitats sites and functionally linked land.
7. Overflight however presumably occurs at a safe altitude, taking into account the risks associated with bird strike if flying at low level. It was confirmed at the Hearing that the height recommended by the Civil Aviation Authority in relation to areas containing large assemblages of birds is 2000ft, albeit the submitted Habitats Regulations Assessment (HRA) suggests overflight of the habitats sites has generally occurred at 1000ft in the past. At this height the submitted HRA further indicates limited potential for disturbance of the bird species of interest. Though it remains the case that aircraft could lawfully fly at lower altitudes, and as low as 500ft, as noted above, the possible risks of doing so limit the likelihood.
8. The proposed airfield would not therefore give rise to any effects which could not have occurred in the past, or which may not be occurring already. It has further been shown that no functionally linked land is likely to exist within the immediate vicinity of the airfield; that planes taking off and landing would only ordinarily dip below an altitude likely to give rise to bird strike close to the airfield itself; and that most take-offs and flights would be inland and away from the habitats sites. It appears that only insofar as the proposed airfield lies closer to Sandwich Bay than Maypole Airfield, that a slightly increased potential for overflight arises. In this regard the HRA specifically identifies inbound flights from the east, whose flight path might cross the habitats sites, as a risk factor. This could give rise to an increased risk of bird strike and disturbance, albeit the risk would remain small.
9. A helipad also forms part of the proposal, however this has been presented as for use by the emergency services only. Helicopters attending an emergency in any case ordinarily land wherever there is scope and a need to do so. As such, the presence of the helipad would not give rise to any increase in helicopter use likely to affect the habitats sites.
10. As the proposal additionally includes a glamping site, it would also support a small number additional stays within the area. Within this context, visitors might wish to pursue leisure activities on land or at sea, which could involve accessing the habitats sites. Again, increased disturbance of birds and degradation of the underlying habitat could potentially occur.
11. Disturbance and degradation would clearly be at odds with the conservation objectives of the SPA. As likely significant effects on the integrity of the habitats sites cannot be ruled out, an Appropriate Assessment (AA) is required.

12. The Council's strategy for mitigating recreational disturbance is set out within the Thanet Coast and Sandwich Bay SPA Strategic Access Mitigation and Monitoring (SAMB) Strategy 2023. Due to its small size, the development would not be required to pay a contribution under the scheme. The Council has however confirmed that required mitigation would be covered by existing funding of SAMB measures. Though this would therefore address increased recreational pressure attributable to the glamping site, the Council's scheme does not extend to aviation.
13. The appellant has accordingly proposed that aircraft would avoid overflight of the habitats sites, or if so doing, fly above at least 1500ft. Interested parties, including the RSPB, have questioned the value of these measures, citing a list of environmental variables. However, no clear evidence has been presented which indicates that they would be ineffective in principle. Natural England (NE) has otherwise previously confirmed that the proposed measures being secured it raises no objection to the scheme, and I am content to rely on this previous confirmation for purposes of the AA. As the Secretary of State's advisor on such matters, I place greater weight on NE's advice than objections raised by interested parties.
14. Once airborne the actions of pilots cannot be controlled by means of planning conditions or obligations, and I have no reason to doubt that NE was aware of this. Actions designed to achieve the above measures can however be secured with the context of management of the airfield and use. The undertaking of such actions can themselves be monitored through an appropriately specified system of record keeping. In this way the slightly increased risk of bird strike and disturbance related to overflight could be mitigated.
15. Three differently dated Unilateral Undertakings (UU) have been submitted by the appellant, each showing slight variations in the obligations that they contain. I have based my decision on that dated 26 June 2023, which was submitted shortly after the Hearing. This sets out a series of management actions which can be summarised as: directing pilots to visit by prior permission only; directing them to sign an undertaking in advance to either avoid the habitats sites, or to overfly them at a minimum altitude of 1500ft; to impose sanctions in the event of non-compliance; and to maintain a log book available for inspection by the Council. It also separately sets out a restriction in relation to use of the helipad.
16. The drafting of the UU is however problematic insofar as aside from use of the helipad, the actions secured by the above obligations would all be dependent on the use of 'best endeavours' only. The UU therefore fails to provide certainty that these actions would actually be carried out. The vague nature of the term gives rise to further uncertainty as to whether the obligations would be enforceable, and this is accentuated by a lack of precise and detailed specification of record keeping procedures in relation to both signed undertakings and the log book. Similar issues were identified in relation to the previous UUs and aired during the Hearing.
17. The appellant stated within this context that the airfield would have a 'manager'. It therefore remains unclear why an unequivocal commitment cannot be made to undertake the actions set out within the obligations. The appellant's persistent reluctance to provide such commitment lends weight to doubts also expressed at the Hearing over precisely how the airfield would be

managed, and whether such management would be sufficient to fulfil the various tasks required of it.

18. Even had I found that the obligations above were fit for purpose, the UU in any case fails to fully comply with the requirements set out within Section 106 of the Act. This is because it erroneously states that 'the obligations contained in this Unilateral Undertaking are planning applications for the purposes of Section 106 of the Act'. Though the UU contains a further clause which enables the obligations to be instead read in relation to Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011, their effectiveness within this context is open to question. For this and the above reasons I can attach no weight to the obligations.
19. I have considered whether the same range of actions could instead be secured by condition. However, even were I to find that this would be an acceptable alternative, it would not assuage my concerns in relation to future management of the airfield, or thus provide clear assurance that required management actions would be properly implemented. That being so, I cannot conclude that likely significant effects on the integrity of the habitats sites would be fully mitigated.
20. Alternative solutions which would have a lesser impact on the integrity of the habitats sites clearly exist. Whilst this might include provision of an airfield elsewhere, my findings above indicate that a set of properly detailed and secured management actions to be undertaken within the context of a properly constituted system of site management, could address outstanding concerns. Consequently, allowing the appeal would be contrary to The Conservation of Habitats and Species Regulations 2017.
21. For the reasons set out above I conclude that the development would have a likely adverse effect on the integrity of the habitats sites. This is on account of the failure to mitigate the increased potential risk of bird strike and disturbance to which it would give rise. Whilst the Council has not cited any relevant development plan policy with which the scheme would thus conflict, allowing the appeal in the above circumstances would be unlawful.

#### *Living conditions*

22. The Dover District Council Core Strategy 2010 (the CS) lacks any policy which specifically addresses general aviation (GA). Within this context, Policy OS7 of the CS, which more generally relates to outdoor sports and recreational facilities, restricts all such uses where there would be an adverse effect in relation to noise. Though Policy OS7 of the CS broadly reflects amenity considerations as set out within the National Planning Policy Framework (the Framework), it imposes a higher level of restriction in relation to noise than is currently set out with national policy.
23. The CS obviously pre-dates the call within paragraph 106 of the Framework for planning policies to recognise the importance of maintaining a national network of general aviation airfields, and their need to adapt and change over time – taking into account their economic value in serving business, leisure, training and emergency service needs, and the Government's General Aviation Strategy. For this and the above reasons, Policy OS7 appears to provide a limited and somewhat overly restrictive basis upon which consider a proposal

- of the type in question. I have therefore taken this into account in my assessment below.
24. The proposed airfield would occupy a plateau of agricultural land near to the very small settlements Little Mongeham and Northbourne. The broader rural area is sparsely populated and for the most part characterised by other open agricultural land. In this regard the nearest large settlement is Deal, the fringes of which lie around 1.5 miles towards the east. The proposal would provide scope for 20 privately owned leisure aircraft to be kept at the site, with further capacity for 10 visiting aircraft of similar type.
  25. Whilst the location has been described as 'tranquil', passing traffic was frequently audible in the background during my visit, as too were aircraft. Based on noise monitoring data submitted, I have no reason to consider that this was unusual. The area is nonetheless reasonably quiet, and noise generated by the operation of the proposed airfield would obviously lead to a marked change.
  26. The specialists who attended the Hearing noted the lack of specific methodology for evaluating noise relating to GA proposals of the type in question. Measures based on assessment of larger schemes have however been identified. These require aircraft noise to be averaged over a 16-hour period, regardless of whether the actual hours of operation may differ, with broader operational effects averaged over a 92-day summer period. In this context the Lowest Observed Adverse Effect Level (LOAEL) for aircraft is 51dB LAeq, 16h, whilst the generally agreed Significant Observed Adverse Effect Level (SOAEL) is 63dB LAeq, 16h. Both LOAEL and SOAEL, and their related effects are defined within the Noise Policy Statement for England (NPSE) and the Planning Practice Guidance (PPG).
  27. The only detailed attempt at modelling set before me is from the appellant. Though the assumptions underpinning this modelling have been criticised by the Council and interested parties, I have thus been provided with no alternative. Insofar as the appellant's modelling assumes a weight range for the aircraft likely to use the airfield, this differs from the national average, but only slightly. An appropriate range of aircraft types have been sampled as a basis for establishing engine noise, and detailed consideration has been given to the likely pattern of runway use based on past weather conditions. It was additionally confirmed at the Hearing that there would be no landing circuit. As the modelling further seeks to establish effects based on a lack of wind and full loading, it provides a good indication of a range of worst-case scenarios.
  28. Differences in engine noise between take offs and landings are such that for the purposes of averaging, take offs were agreed to be of principal interest. Based on the appellant's proposed cap of 7500 movements per annum, 3750 of which are assumed to be take offs, the modelling shows that the noise generated by an 'average' level of daily use involving 10 take offs would comfortably fall below the LOAEL. This would be the case considered both on a daily basis and in relation to the 92-day summer average.
  29. However, the summer period would be the busiest time of year, and the HRA indicates that the six months from April to September would be likely to account for 69% of all movements. This would include a number of proposed 'event days' involving up to 45 take offs.

30. The main parties agreed at the Hearing that adjustment to take account of event days alone would raise take-offs to a daily average of 13 during the 92-day summer period, but add only 1dB. This would be insufficient to meet or exceed the LOAEL as measured in relation to either of the 2 main receptors. This would only occur near Nutbourne at around the point at which average take-offs reached or exceeded 20 per day. As the latter appears to be a more realistic level at which to consider the 92-day summer average, and a level which is consistent with that described within the submitted Planning Statement, at worst the LOAEL would be met or slightly exceeded.
31. The appellant proposes a maximum level of 30 daily take offs, which could see the airfield at its full potential ordinary use. Whilst this might perhaps be anticipated on a weekend in summer with perfect flying conditions, the appellant explained that it would be highly unlikely on a day-to-day basis in relation to a non-commercial use. I see no reason to disagree. Ultimately, this would not alter the average as considered above as days that would see a higher than average level of use would necessarily be balanced by days seeing a lower than average level of use. Days when the LOAEL was met and exceeded, would thus be balanced by days when it was not.
32. Whilst the main parties were agreed that at worst the 92-day summer average would lie somewhere between LOAEL and SOAEL, the Council's more particular concern was the impact that individual noise events associated with overflight would have in relation to  $L_{Amax}$  values. Indeed, noise would not be experienced as an average in practice. Here the modelling suggests that individual noise events would be likely to comfortably exceed an  $L_{Amax}$  of 63dB relative to the main receptors, and to other fixed points on the ground. These peaks would however be short lived, as, relative to a fixed point, noise generated by overflight would ordinarily rise and fall with movement. Moreover, given likely variation in the frequency of use of each end of the runway, neither of the main receptors would experience every noise event. The impact of those events would be reduced further where pilots adopted a turn on take off. Given that aircraft taking off from the airfield would both climb and disperse, effects on the ground would become less intense and less focused with distance. This would limit the extent to which residents within the broader area were exposed to individual noise events of the above type, particularly when taking into account the sparsely populated nature of the locality.
33. It is inevitable that the operation of an airfield in a location where none was previously present would be noticeable. This would be especially true on days which saw the most frequent movements, such as when events were being held. Given the high level of established local objection to the scheme it is also likely therefore that aircraft noise would be considered a source of annoyance to local residents, whatever its level. I was left in no doubt of this by those attending the Hearing. However, whilst I accept that this would be the case, and notwithstanding the fact that individual noise events could briefly exceed 63dB, it remains the case that the overall effects as considered above would not be significant.
34. The NPSE states that where the noise impact lies somewhere between LOAEL and SOAEL all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life. These actions are reiterated in relation to LOAEL in the PPG. It follows that effects at or above LOAEL which



fall short of being 'significant', should not necessarily be considered unacceptable. The NPSE confirms this.

35. The appellant states that the noise data presented models residual effects, with 'mitigation' already taken into account. The objective was apparently to present a model of operation that would at most modestly exceed the LOAEL. Whilst the Council and interested parties thus criticise the absence of a model which shows worse effects, it is logical that effects would worsen through simple upward adjustment of some of the basic inputs considered above.
36. Aside from the annual cap on movements, the mitigation measures detailed include limitations on the length of the flying day, with this restricted to the hours of daylight, and limitations on the range of activities which could be operated from the site. Additional restriction of activities on the ground would further limit noise perceived outside the site. Notwithstanding the concerns I have identified in relation to the adequacy of site management above, these measures would require far less administrative effort than those required in relation to habitats sites mitigation, and could be simply enforced.
37. Scope clearly exists to impose a higher level of restriction than is proposed by the appellant, and this is reflected in the Council's list of conditions. Here I agree with the Council that it would be appropriate to cease activities earlier on summer evenings than 20:00. However, the level of restriction otherwise requested would severely limit activity at the airfield, including by preventing its full operation at any time other than on events days. My findings above do not indicate that this would be proportionate. I am therefore satisfied that reasonable steps both would and could be taken to mitigate and minimise the adverse effects of noise on health and quality of life.
38. Insofar as adverse effects would nonetheless still arise, it is of further relevance to consider the benefits of the scheme, taking account of the broader support expressed at national level for GA. As set out above, and perhaps most significantly, the airfield would provide replacement capacity for that lost through closure of Maypole Airfield. In this context it would help to sustain the broader economic benefits associated with the aviation sector. Whilst the airfield could additionally provide opportunities to foster interest in aviation through local engagement, modest economic benefits would also derive from operation of the glamping pitches. At least in relation to noise impacts on surrounding residents, these benefits, considered together with my findings above, indicate the acceptability of the scheme notwithstanding its conflict with Policy OS7 of the CS.
39. For the reasons set out above I conclude that subject of appropriate conditions the effects of the development on the living conditions of occupants of nearby dwellings in relation to noise and disturbance would be acceptable.

### **Other Matters**

40. A footpath crosses the field within which the airfield is proposed. This runs close to one end of the proposed runway, and consequently an alternative route has been offered. Though the Council identified that this would result in some loss of amenity for users of the path, this was not considered sufficient grounds for objection. The section of footpath in question is reasonably short, and any impact would therefore be of limited nature, particularly when taking into account the opportunity for use of an alternative route.

41. Insofar as concern has also been identified in relation to the potential for contamination of ground water, the Environment Agency has confirmed the range of activities that it considers could be safely carried out. This is a matter which could therefore be appropriately addressed by condition.
42. Interested parties have raised a number of concerns which are not shared by the Council. These include lead pollution, landscape harm, loss of best and most versatile agricultural land, and harm to the settings of a wide range of designated heritage assets. The Council has however confirmed that it is unlikely that lead or other air pollution of concern would arise. Landscape effects would be limited by topography, the fact that the airfield would have a grass surface, by the careful positioning of hangers, and by the enclosure of the glamping facility. Any loss of agricultural land would be very limited, and the site could potentially revert back to agricultural use in the future. Though various designated heritage assets occur within the broader area, none are located adjacent to the site, and existing aircraft noise already forms a component of the background noise environment within which they are experienced. The above being so, I find no cause to reach a different view.
43. Further concern has also been raised that aircraft could frighten horses. This is doubtless a concern which has existed since the beginnings of powered flight. However, though this is a matter of direct relevance in relation to certain species of birds using the habitats sites, I see no particular reason why the simple potential for a horse to be frightened by aircraft should act as a restriction for the proposed development.

### **Conclusion**

44. For the reasons set out above the effects of the development in relation to the habitats sites would be unacceptable, thus indicating that planning permission must be refused. I therefore conclude that the appeal should be dismissed.

*Benjamin Webb*

INSPECTOR



## **APPEARANCES**

### **For the Appellant**

Ann Bartaby

Spring Green Planning

Ed Clarke

Clarke Saunders Associates

### **For the Council**

Stephanie Bramley

Senior Natural Environment Officer

Chris Brown

Environmental Health Officer

Sue Macdonald

Mott MacDonald

Adam Reynolds

Principal Planning Officer

Daniel Thorman

Solicitor

### **Interested parties**

Daniel Edelman

Northbourne Parish Council

Ricardo Gama

Lee Day (on behalf of Chocks Go Away)

John Gilder

General Aviation Awareness Council

Steve Hoskins

Supporter

Paul Osborne

Chocks Go Away

Valerie Owen

Le Vaillant Owen (on behalf of Chocks Go Away)

Seth Roberts

Hayes McKenzie (on behalf of Chocks Go Away)

David Robotham

Chocks Go Away

### **Documents presented at the Hearing**

Appeal Decision APP/C2741/A/08/2069665

Clued Up: Safety Matters for GA Pilots Spring/Summer 2015

English Nature Birds Network Information Note: Disturbance Effects of Aircraft on Birds

Extract from: The Lower Derwent Valley SPA and Ramsar Site: Information, Analysis and Assessment to support an Appropriate Assessment.

Unilateral Undertaking dated 20 June 2023.