

CARLISLE CITY COUNCIL

Report to:- **Carlisle City Council**

Date of Meeting:- **25th January 2013**

Agenda Item No:-

Public

Title:- **UPDATE REGARDING APPLICATION 10/1116,
CARLISLE LAKE DISTRICT AIRPORT, CARLISLE,
CUMBRIA**

Report of:- **Director of Economic Development**

Report reference:- **ED 01/13**

Summary:-

This report provides an update on the work undertaken and the further issues and queries raised regarding associated procedural and material matters concerning the application since it was considered by the Committee in August 2012.

Recommendation:-

Having taken account of the new information, the proposal is still recommended for approval subject to the engrossment of the Section 106 Agreement, and imposition of the relevant conditions.

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Director of Development

02 January 2013

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None

1. INTRODUCTION

- 1.1 This is an Agenda report to the previous addendum presented to the Committee Meeting on the 3rd August 2012.
- 1.2 Members will recollect that on the 3rd August 2012 they gave authority to issue approval to the Director of Economic Development subject to:
1. the acceptance of the Appropriate Assessment/clarification on Natural England's position regarding Great Crested Newts;
 2. the receipt of advice regarding the implications of the Commission's guidance on the "Financing of Airports and Start-up Aid to Airlines Departing from Regional Airports" (2005) and State Aid (which Members may recall followed receipt of a letter from Dickinson Dees the day before the Committee Meeting raising this as an issue on behalf of their client);
 3. the completion of a section 106 agreement including:
 - i. an obligation on the applicant to keep the airport open and the runway maintained unless it could be shown that the airport is no longer economically viable (even with the distribution centre rental income);
 - ii. Travel Plan obligations requiring: payment of a Travel Plan Bond to the County Council as the Highway Authority calculated by using the cost of an annual Cumbria Mega rider Gold ticket multiplied by the proposed reduction in the number of employee commuting trips multiplied by 5 years; the applicant designating a Travel Plan Co-ordinator to carry out annual monitoring and reporting of results to the County Council; the payment of £2725 per year for 5 years in respect of County Council staff; and the setting up of a Steering Group to oversee the frequency of the shuttle bus service;
 - iii. the payment of £100,000 in order to enable the undertaking of a habitat enhancement scheme to benefit breeding waders; and
 - iv. the imposition of the relevant conditions.
- 1.3 This report confirms that the River Eden SAC Appropriate Assessment has been completed.
- 1.4 On 22nd August a request was made by solicitors Dickinson Dees (on behalf of a resident objector Mr G Brown) to the Secretary of State to call-in the application for the latter's determination. By letter dated 18th September the request was declined.
- 1.5 The Council has taken advice regarding the asserted State Aid issue.
- 1.6 The terms of the section 106 agreement have been agreed and the Agreement only awaits engrossment.

- 1.7 On 21st September Dickinson Dees requested copies of a considerable amount of documentation and raised numerous issues. Having assembled the information, Officers responded formally on 24th October.
- 1.8 On 26th November, and in the context of correspondence received from Mr D Ransley (of Oakfield House), Dickinson Dees also drew to Officers' attention the announcement that Aer Lingus Regional/Aer Arann is ceasing operations from Waterford Airport and requested that the matter be brought back to Committee. Mr Brown separately drew attention to a change in market conditions/performance of the Stobart Group on the stock market.
- 1.9 It is considered that the new information does not fundamentally change circumstances regarding Carlisle Airport; and the intricacies of the change in market conditions and performance of the Stobart Group on the stock market do not have a material bearing on the main planning issues.
- 1.10 Whilst not altering Officers' recommendation, as a precaution only (because it is not believed that Councillors' resolution would have been, or would be, different), the application is brought back to Members. Having taken account of the new information, this report continues to recommend, on balance, that the proposal is approved subject to the engrossment of the Section 106 Agreement, and imposition of the relevant conditions.

2. CURRENT POSITION

- 2.1 Following the Committee Meeting on the 3rd August 2012 the River Eden SAC Appropriate Assessment has been completed and signed (dated 04.08.12).
- 2.2 The City Council's independent ecological consultant has confirmed that the approach of the applicant to use the "fire ponds" as an emergency water supply (EWS) only when, and in the unlikely event that, the Airport's hydrant system is not available to refill fire tenders, is acceptable although Natural England has highlighted that if the ponds are used, the operator of the Airport may have to justify their actions in court if legally challenged under the Habitats Regulations. This is in the context that the EWS structures date from the 1960s; continue to be operationally available; the proposal will not change their physical structure, purpose or how they are used; and the Airport Manager does not recall such circumstances where, in the Airport's history, the hydrant system had failed or was otherwise unavailable. The applicant has explained that the risk of a serious accident has already been assessed to be sufficiently low to be acceptable for humans; the risk of such an accident happening during both the season when newts are likely to be in the EWS structures and when the hydrant system has simultaneously failed is considerably lower still. Natural England has also confirmed that providing the new attenuation ponds are designed in such a way as to prevent great crested newt access in the future, there should be a minimal risk of offences being committed under the legislation.
- 2.3 In a letter dated the 22nd August 2012 Dickinson Dees, on behalf of their client, wrote to the Secretary of State (SoS) requesting that the application be called in for

consideration by way of a public inquiry. The Department for Communities and Local Government replied in a letter dated the 18th September confirming that in the opinion of the SoS the proposals do not: involve conflict with national policies on important matters; have significant effects beyond their immediate locality; give rise to substantial regional or national controversy; raise significant architectural and urban design issues; or involve the interests of national security or of Foreign Governments. Nor did he consider that there is any other sufficient reason to call the application in for his own determination. The SoS therefore decided not to call in the application.

- 2.4 On the 21st September 2012 Dickinson Dees wrote to the City Council asking for: confirmation of the additional information received from the applicant in relation to the Environmental Statement; copies of all documentation including correspondence (with Natural England) and draft and full Appropriate Assessments, and otherwise in respect of protected species including Great Crested Newts; confirmation how the amount required to undertake the habitat enhancement scheme has been calculated; confirmation on what is being followed in respect of obtaining advice on State Aid; what procedure the Council has undertaken in respect of any disposal of its freehold interest in the Airport; and confirmation whether the Applicant has indicated that it will underwrite the legal costs of any challenge, if such was to be made, to the grant of planning permission. The City Council responded in a letter dated the 24th October – see attached.
- 2.5 In summary, the River Eden SAC Appropriate Assessment has been completed. In relation to the “fire ponds” they are currently operationally available and the current proposal will not change how they are used.
- 2.6 The Council has also taken advice regarding the State Aid issue. Officers are satisfied that State Aid rules are not infringed and that the manner in which the application has been processed and determined is lawful. Dickinson Dees acknowledged in December, some 4 months after they had raised the issue and notwithstanding that the Council had requested sight of their legal Opinion in October, that they were still not themselves in receipt of a written Opinion from their own Counsel. No subsequent correspondence, with the exception of State Aid, has been received on those issues highlighted in paragraph 2.4 above following the Council’s response. The Section 106 Agreement only awaits engrossment.
- 2.7 On the 26th Nov 2012 Dickinson Dees expressed the views of their client (Mr Gordon Brown) on a new matter with the Council in correspondence concerning the announcement that Aer Lingus Regional/Aer Arann is ceasing operations from Waterford Airport. On the 21st December they also said they were considering the implications (if any) of the recently enacted Civil Aviation Act 2012. In addition Mr Brown has himself written to the Council concerning the change in market conditions/performance of the Stobart Group on the stock market.

a) Aer Arann

- 2.8 In an e-mail received on the 19th November and letter dated the 26th November 2012 the occupier of Oakfield House (Mr D Ransley) raised a number of queries in

the light of a press article and statement explaining that Air Lingus Regional is to discontinue their London Luton, Southend and Manchester services from Waterford Airport. The Council responded in a letter dated the 17th December – see attached.

- 2.9 In a letter also dated the 26th November, Dickinson Dees wrote to the Council expanding upon the issues raised by Mr Ransley by stating, amongst other things, that:
- i. Previous letters from York Aviation, on behalf of Mr Brown, were submitted to the Council in which the poor performance of Aer Arann was highlighted with regard to routes to Southend Airport and in particular the route between Southend and Waterford Airport. The available evidence suggested the services provided by Aer Arann were vulnerable to cancellation, an example being Aer Arann ceasing to operate the route between Southend and Galway. Having identified the vulnerability of such services, it was considered highly likely that any service proposed to or from Carlisle Airport would suffer a similar fate;
 - ii. paragraphs 1.101 to 1.110 of the Committee Report set out the concerns regarding the viability of services – para. 1.110 records that Alan Stratford Associates believe that commercial air passenger services from Carlisle would be of borderline financial viability for Aer Arann or any other operator;
 - iii. in the presentation to the Committee the applicant and its consultant (Mott MacDonald) placed particular emphasis on the prospect of services to and from Carlisle being operated by Aer Arann, citing Southend Airport as a precedent. This appears to have been influential in persuading the Committee to grant permission in the expectation at least of some level of commercial air services. In particular, claims were made in the Business Case submitted by the applicant that services from Southend and Luton had stimulated the market compared to the position when Aer Arann was operating only from Luton. In fact passenger numbers carried between Southend and Luton combined were less than were previously carried when all services operated to Luton alone;
 - iv. The recent announcement made by Waterford Airport confirms that all operations by Aer Arann from Waterford Airport (including routes to Southend, Luton and Manchester) will cease. In the 12 months at the end of October 2012, passengers carried on the Waterford based aircraft across all three routes were 66,756 according to the Civil Aviation Authority airports statistics. This confirms the assessment carried out by York Aviation (letter dated 12.06.12) that operating at the levels of demand likely to be attracted to use services to and from Carlisle will not be viable if operations from Waterford were not viable for the airline. If the 66,756 passengers carried by Aer Arann on the Waterford routes were insufficient to sustain those routes, on the Council's own consultant's calculations, passenger numbers flying from Carlisle will not be able to sustain the proposed routes even in the long term;

- v. The cessation of services between Southend and both Galway and Waterford demonstrates that Aer Arann, which now flies solely as Aer Lingus Regional, is clearly not bound to operate routes which are not viable, even where those routes include an airport owned by a shareholder in Aer Arann, the Stobart Group. This must detract from the evidence provided by the applicant and Aer Arann to the local planning authority;
- vi. The Council has the power to revisit a resolution before the formal grant of planning permission if new information of material relevance is drawn to its attention, or where there is a material change in circumstances. A local authority has a duty to consider whether it should revisit a resolution in such circumstances. The new information regarding Aer Arann is something which the Council must take into account before it moves to grant planning permission.

- 2.10 The applicant has responded by explaining that new improved road links to Dublin were put in place from September 2010 and this, coupled with the relatively poor economic environment in Ireland, led Aer Arann to review the operations of Waterford as a base generally, not just one route in isolation. It was decided to cease the Southend route and others as a result of a generally declining market. The applicant fails to see how the closure of a particular route has any material bearing on the proposed routes from Carlisle Airport or the decision made by the Council at the 3rd August 2012 Committee Meeting.
- 2.11 No doubt Members will recall the presentations made on behalf of the applicant during the Meeting on the 3rd August 2012 which referred to Southend Airport. In Officers' view, and for the avoidance of any doubt, it should not be inferred that the applicant's present development of Southend would be replicated at Carlisle. The news about Aer Arann/Aer Lingus Regional ceasing services from Waterford Airport underlines the danger of drawing parallels. It was partly out of recognition of such that the recommendation to Members was very much on balance.
- 2.12 However, the situation regarding Waterford Airport is not seen as representing a fundamental change in circumstances concerning Carlisle Airport. The difference of views in the forecasts between the various aviation consultants involved, and the difficulties in making forecasts have previously been acknowledged. When assessing the proposal it is still the case that it will at least achieve runway renewal; would keep the Airport open when (if planning permission was refused) it could potentially close the day after; and the Council's independent consultant acknowledges that, in the short/medium term, scheduled services to Dublin and Southend could be profitable albeit of borderline financial viability.
- 2.13 As an aside, letters from Dickinson Dees dated the 26th November 2012 and 11th January 2013 also sought clarification on a number of other points associated with procedure (namely, the new information should be put before the Committee, and they should be afforded the right to make oral representations to the Committee), and the disclosure/drafting of the Section 106 Agreement with regard to: how the Council intends to define "viability"; the methodology for assessment of viability; and what threshold or measure of viability will the Council adopt in the enforcement of

this obligation. The City Council responded to these latter queries in letters dated the 17th December and 14th January – see attached.

b) Market Conditions

- 2.14 In a letter dated the 14th December, Mr Brown sought to remind the Council of the realities of micro-economics in that customers seek best value and investors seek maximum returns commensurate with levels of perceived risk. The Stobart Group went to the markets with a bond issue in November 2012 that was later withdrawn. The rate of return offered to bond purchasers was 5.5%, and subsequently there has been a further fall in the share price. The business plan submitted by the applicant in June 2012 stated that the proposed distribution centre and stated airside works would be financed by borrowing at LIBOR plus 3% (assumed to be 4% overall) and equity at a cost of 6p per share.
- 2.15 Mr Brown goes on to highlight two points. Firstly, that goods and services are provided by freely interacting forces of supply and demand that are out-with the scope of any planning agreement. Secondly, the assumptions made by the applicant in its submissions in June 2012 appear to be seriously flawed and it is difficult to see how the Council can justify placing any weight upon them. Mr Brown considers that the balance has shifted further away from the applicant.
- 2.16 The applicant has responded to the letter from Mr Brown by explaining that the recent planned Bond Issue and the Stobart Group Share Price have nothing at all to do with their planning application. The raising of funds under the Bond Issue was only one of several options open to the Group and in any event was not linked to the funding of Carlisle Airport. The fact that they would have been paying 5.5% interest on the Retail Bond (had it been successful) was higher when compared to the 4% rate quoted in their Business Plan are not connected in any way. For the debt element of funding to do with Carlisle Airport they would raise a separate facility of £10m, probably from a Bank - 3 month LIBOR rates have actually fallen to around 0.5% today, so if a 3.0% margin was assumed again, the interest costs at 3.5% would actually be less than the submitted Business Plan.
- 2.17 The applicant therefore suggests that Mr Brown is actually incorrect in his assertion that debt costs associated with the Carlisle Airport plans have risen since the recommendation in July 2011 – it is considered that these costs have fallen, making the scheme even more viable.
- 2.18 When assessing this issue there is an evident difference of opinion between parties. Nevertheless, it is considered that the intricacies of the stock market do not have a material bearing on the main planning issues.

c) Civil Aviation Act 2012

- 2.19 As mentioned above, Dickinson Dees in their letter dated the 21st December stated that they were considering the implications, if any, of the Civil Aviation Act 2012 which has just received Royal Assent. The applicant believes this to be a non-issue

as far as the plans for Carlisle are concerned. This is because the Act is primarily about how responsibilities currently undertaken by the Department for Transport (DfT) will migrate to the Civil Aviation Authority over time, i.e. - bringing forward the necessary legislation to transfer the delivery of the regulatory and compliance functions away from the DfT. The Act seeks to regulate “dominant airports” but it has not been suggested that the “market power” test is met in respect of Carlisle Airport.

2.20 It is not considered that the Act raises material issues.

3. CONCLUSION

3.1 The paragraphs above show that all the points mentioned in the Council’s resolution of the 3rd August have now been satisfactorily addressed. Officers’ recommendation remains as before.

3.2 In overall terms, and as previously stated, Members need to be aware of the risks associated with the proposal, namely:

- i. If not economically viable the Airport is likely to close;
- ii. even with permission there is no incentive to promote the Airport for passenger movements/air freight if it is not particularly profitable to do so;
- iii. if the airport is not viable there may be further applications for enabling development ; and
- iv. if the airport is not viable, the grant of permission could result simply in an HGV distribution centre in the countryside.

3.3 However, it is still the case that the proposal will at least renew the runway (through the use of a planning condition preventing occupation of the freight distribution centre until the works have been completed) and keep the Airport open when, if planning permission was refused, it could potentially close the day after. Furthermore, the Council’s independent aviation consultant has acknowledged that, in the short/medium term, scheduled services to Dublin and Southend could be profitable albeit of borderline financial viability.

4. RECOMMENDATIONS

4.1 Very much on balance, and having taken account of the new information, the proposal is still recommended for approval subject to the engrossment of the Section 106 Agreement, and imposition of the relevant conditions.

5. IMPLICATIONS

- Staffing/Resources – The work in preparation of this report has been resourced from planning and legal staff with additional external advice as necessary.

- Financial – Throughout consideration of this application additional financial resources have been allocated to ensure due consideration of all the issues raised.
- Legal – Legal advice has been taken into account in preparation of this report.
- Corporate – This application relates to economic development the delivery of which will contribute towards the local economy.
- Risk Management – The risks are outlined in the report.
- Equality and Disability – None.
- Environmental – These issues were assessed when the application was considered by the Committee at its Meeting on the 3rd August 2012.
- Crime and Disorder – None.
- Impact on Customers –

Impact assessments

Does the change have an impact on the following?

Equality Impact Screening	Impact Yes/No?	Is the impact positive or negative?
Does the policy/service impact on the following?		
Age	No	
Disability	No	
Race	No	
Gender/ Transgender	No	
Sexual Orientation	No	
Religion or belief	No	
Human Rights	Yes	
Health inequalities	No	
Rurality	Yes	

If you consider there is either no impact or no negative impact, please give reasons:

The impacts on Human Rights and rurality were taken into account when the application was considered at the Meeting on the 3rd August 2012.

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DATED

2013

THE COUNCIL OF THE CITY OF CARLISLE (1)

CUMBRIA COUNTY COUNCIL (2)

STOBART AIR LIMITED (3)

and

PRUDENTIAL TRUSTEE COMPANY LIMITED (4)

PLANNING OBLIGATION BY AGREEMENT

Entered into pursuant to Section 106 of the Town and
Country Planning Act 1990 in relation to land at
Carlisle Lake District Airport

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Reference AB

CONTENTS

1	OPERATIVE PROVISIONS INTERPRETATION	1
2	STATUTORY PROVISIONS.....	5
3	CONDITIONALITY	5
4	THE OWNER'S OBLIGATIONS	6
5	THE COUNCIL'S OBLIGATIONS	<u>89</u>
6	THE COUNTY COUNCIL'S OBLIGATIONS	9
7	AGREEMENTS AND DECLARATIONS	10

PARTIES

- (1) **THE COUNCIL OF THE CITY OF CARLISLE** of Civic Centre Carlisle CA3 8QG (the “**Council**”)
- (2) **CUMBRIA COUNTY COUNCIL** of the Courts Carlisle Cumbria CA3 8NA (the “**County Council**”)
- (3) **STOBART AIR LIMITED** (Company Number 4185647) whose registered office is at Stretton Green Distribution Park Langford Way Appleton Warrington Cheshire WA4 4TZ (the “**Owner**”)
- (4) **PRUDENTIAL TRUSTEE COMPANY LIMITED** (Company Number 1863305) of Laurence Pountney Hill London EC4R 0HH (the “**Mortgagee**”)

INTRODUCTION

- A Words and phrases used in this Deed are defined in Clause 1.1.
- B The Owner has the benefit of the Lease.
- C The Mortgagee has the benefit of a legal charge over the Land dated 28 May 2010 and is a party to this Deed in order to give its consent to binding its interest in the Land with the obligations in this Deed on terms set out herein.
- D The Council is the local planning authority for the purposes of Part I of the Act for the area within which the Land is situated and the person who is entitled to enforce the obligations contained in this Agreement.
- E The County Council is the local highway authority for the purposes of the Highways Act 1980 for the area within which the Land is situated.
- F On 16 December 2010 the Planning Application was submitted to the Council on behalf of the Owner.
- G The Council has resolved to grant the Planning Permission subject to the completion of this Deed and is satisfied that but for the provision of the planning obligations under this Deed the Planning Permission would not be acceptable in planning terms and this planning obligation is therefore required to meet the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010.

IT IS AGREED THAT:

1 OPERATIVE PROVISIONS INTERPRETATION

- 1.1 In this Deed where the context so admits the following expressions shall have the following meanings:

"Act" means the Town and Country Planning Act 1990 as amended.

"Airport" means Carlisle Lake District Airport comprising part of the Land.

"Airport Facilities" means those facilities and services required to operate the Airport in accordance with the Civil Aviation Authority Public Licence.

"Civil Aviation Authority Public Licence" means the public aerodrome licence with No.P855 issued by the Civil Aviation Authority on 27 September 2011 or such other superseding licence as may be issued by the Civil Aviation Authority (or its successor body, as the case may be, from time to time) to the Owner or such other operator of the Airport from time to time.

"Commencement of Development" means the date when a material operation is carried out in respect of the Development within the meaning of Section 56 of the Act PROVIDED THAT for the purposes of this Deed none of the following operations shall constitute a material operation:

- (a) works of demolition;
- (b) site clearance and de-vegetation;
- (c) environmental (including archaeological) investigation;
- (d) ground investigation or site survey works;
- (e) remediation;
- (f) laying of services or service media;
- (g) erection of boundary fencing or hoardings;
- (h) erection of site offices;
- (i) erection of contractors' work compound; and
- (j) scraping and levelling of the site (not including the exportation/removal from site nor importation of any earth or ground material).

and **"Commence Development"** shall be construed accordingly.

"Council" means the Council of the City of Carlisle or such successor body from time to time.

"County Council" means Cumbria County Council or such successor body from time to time.

"Deed" means this Deed of Agreement.

"Development" means the development authorised by the Planning Permission.

"Economic Viable Operation" means Operation of the Airport by the Owner or any other reasonably competent operator with control of the Land in a manner that is economically viable which shall be determined with reference to the actual, potential and/or theoretical rental income received from the Development in accordance with the information to be provided as part of a Viability Assessment pursuant to Clause 5.6. For the avoidance of any doubt, any theoretical and/or potential rental income

as part of a Viability Assessment shall be taken into account notwithstanding whether actual rental income is, is not or will be received by the Owner. For the avoidance of further doubt, the meaning of and matters that are material to the meaning of this term for the purposes of Clause 5.6(a) shall in the absence of agreement between the Owner and the Council be determined by an expert appointed pursuant to Clause 8.13 of this Deed.

"Fund Period" means the period of 5 years from Occupation.

"Habitat Contribution" means the sum of £100,000 as a contribution towards the cost of provision and/or maintenance of a Habitat Scheme.

"Habitat Scheme" means an off-site habitat scheme to be determined by the Council to deliver one or more projects benefitting breeding waders or other birds within the County of Cumbria together with a programme for its implementation.

"Land" means all that land comprising of the Development shown for identification purposes edged in red on the Plan.

"Lease" means the lease of the Land granted by the Council on 31 May 2001 for a term expiring on 31 May 2151 as registered at HM Land Registry on 12 June 2001 under title number CU166618 (including all amendments modifications or variations of it).

"Mortgagee" means Prudential Trustee Company Limited or any successor in title.

"Monitoring and Surveying Costs Contribution" means the sum of five (5) instalments of £2,725 payable annually in accordance with the terms of this Deed as a contribution to the costs of the County Council:

- (a) monitoring the implementation and maintenance of the Travel Plan by the Travel Plan Co-ordinator; and
- (b) undertaking field survey work including car park accumulation and occupancy surveys, airport passenger modal split observations, shuttle bus and occupancy checks to validate the annual monitoring report that will be provided by the Airport operator to demonstrate the effectiveness of the Travel Plan in delivering the targets set out in the Travel Plan ("Field Survey Work").

"Non-Commercial Purposes" means aviation activities other than scheduled passenger or scheduled freight operations, including but not restricted to air taxi, flying school, recreational, maintenance, testing, training, emergency, life-saving, military, intelligence service, survey/aerial photography, private/business, delayed scheduled flights, government, Heads of State, medical related or diverted flights.

"Occupation" means the first day that the Development is occupied for purposes authorised by the Planning Permission which, shall (where the context in which this term is referred to elsewhere in this Deed is relevant) include the use of the raised and re-profiled runway comprising part of the Development but shall otherwise in generality exclude fitting-out, security and decoration and **"Occupy"** and **"Occupied"** shall be construed accordingly.

"Operate" means the use of the Airport for the processing of air transport passengers and/or Non-Commercial Purposes and **"Operation"** shall be construed accordingly.

"Owner" means Stobart Air Limited or its successor in title.

"Parties" means the parties to this Deed and their respective successors in title or any person deriving title under them.

"Plan" means the plan which is attached to this Deed.

"Planning Application" means the application for full planning permission for the erection of a distribution centre (inclusive of air freight and road haulage, Integrated +3 Centigrade Chiller chamber, +12 Centigrade Chiller Chamber, workshop and offices) (use classes B1 and B8), gatehouse, canteen/welfare facilities, landscaping new access, parking and other infrastructure works (such as auxiliary fire station, fire sprinkler system and electrical substation) and raised and re-profiled runway 07/25 as submitted to the Council on 16 December 2010 and allocated reference number 10/1116.

"Planning Permission" means planning permission for the Development granted by the Council pursuant to the Planning Application.

"Shuttle Bus Service" means a shuttle/transfer service (including but not limited to a mini-bus) at appropriate times of the day linked to flight arrival and departure times to transfer passengers of the Airport to and from the Airport and Carlisle City Centre to complement any existing public bus services which are in operation from time to time.

"Travel Plan" means the travel plan in respect of the Development prepared and submitted by the Owner as part of the Planning Application and approved by the Council as part of the Planning Permission and required to be implemented pursuant to a planning condition of the Planning Permission.

"Travel Plan Bond" means a form of bond to be procured by the Owner for the benefit of the County Council in a form to the reasonable satisfaction of the County Council from a bondsman the identity of which is to be first approved by the County Council (acting reasonably) for the Travel Plan Fund Amount enforceable by the County Council for the purposes identified in Clause 7.

"Travel Plan Fund Amount" means the sum of One hundred and Eighty Nine Thousand Three hundred and Ninety Three Pounds and Seventy Five Pence (£189,393.75) calculated as the total of the cost to the County Council of purchasing annual North West Mega-rider Gold tickets for 10% (representing the target modal shift required as an output of the Travel Plan) of direct employees at the Airport for five (5) years plus 5% representing administration costs.

"Travel Plan Co-ordinator" means the travel plan co-ordinator appointed by the Owner for the purposes of implementing and maintaining the aims and objectives of the Travel Plan as set out therein and undertaking the role of Travel Plan Co-ordinator as described therein.

“Viability Assessment” means a financial appraisal of the Airport, undertaken at the expense of the Owner, in accordance with the provisions of Clause 5.6(a) for the purposes of demonstrating whether the Airport is capable of Operating as an Economic Viable Operation. The appraisal shall be treated in complete confidence by the Council and will not be made publicly available.

- 1.2 Words in this Deed importing the singular meaning shall where the context so admits include plural meaning and vice versa.
- 1.3 Words in this Deed of the masculine gender shall include the feminine and neuter genders and vice versa and whether denoting natural persons shall include corporations and vice versa.
- 1.4 Any reference to any enactment regulation order or Government guidance includes any statutory modification or re-enactment thereof or any replacement guidance (as the case may be) for the time being in force.
- 1.5 References to any Recital Clause Schedule or Paragraph (or any part of them) shall unless the context otherwise requires be references to a recital clause schedule or paragraph (or any part of them) of this Deed.
- 1.6 Headings are for ease of reference only and are not intended to be construed as part of this Deed.
- 1.7 References in this Deed to the Owner and the Mortgagee shall include or constitute reference to any successor in title to their respective interests in the Land.
- 1.8 References in this Deed to the Council shall include any successor to its functions as the local planning authority for the area within which the Land is situated and anybody to which all or part of the functions of the Council may lawfully have been transferred.

2 STATUTORY PROVISIONS

This Deed is entered into pursuant to Section 106 of the Act and all other enabling powers and is a planning obligation for the purposes of that section with intent to bind the Land (and each and every part of it) subject to the provisions of Clause 3 (as to conditionality) Clause 8.2 (circumstances in which the Deed shall fall away) and Clause 8.3 (release upon parting with interest) and the Deed is intended to be enforceable by the Council as such.

3 CONDITIONALITY

- 3.1 Save for sub-Clauses 5.1(a) and Clauses 4 and 8 of this Deed all of which shall take effect upon completion of this Deed, this Deed shall not take effect unless and until:
 - (a) the Planning Permission has been granted; and
 - (b) Commencement of Development.

4 COSTS OF THIS AGREEMENT

- 4.1 Upon completion of this Agreement the Owner is to pay forthwith to the Council:

- 4.1.1 its reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Agreement in the sum of £ [8,300]; and
- 4.1.2 the sum of £300 for the Council's reasonable costs of processing of the Agreement.
- 4.2 Upon completion of this Agreement the Owner is to pay to the County Council the sum of £750 representing the County Council's reasonable and proper legal costs in connection with the negotiation and completion of this Agreement.

5 THE OWNER'S OBLIGATIONS

The Owner covenants with the Council and County Council (as appropriate) as follows:

5.1 Triggers

- (a) To provide the Council and County Council with no more than seven (7) days' notice in writing of the Commencement of Development having occurred; and
- (b) To provide the Council and County Council with no less than seven (7) days' prior written notice of Occupation.

5.2 Travel Plan

- (a) Without prejudice to the generality of the requirement of any planning condition of the Planning Permission, within six (6) months of Occupation of the Development to submit to the County Council for approval an updated Travel Plan which shall incorporate any measures identified from staff surveys (to encourage more sustainable transport modes) pursuant to the actions to be undertaken by Travel Plan Co-ordinator under the Travel Plan and thereafter to implement the approved Travel Plan thereafter for the operational life of the Development;
- (b) To pay to the County Council the Monitoring and Surveying Costs Contribution on each of the following dates:
 - (i) On or prior to Occupation; and
 - (ii) The 1st, 2nd, 3rd and 4th anniversaries of Occupation.
- (c) Not to Commence Development until a notice has been served on the County Council by the Owner to confirm whether the Owner intends to procure a Travel Plan Bond or to pay the Travel Plan Fund Amount (in lieu of a Travel Plan Bond) prior to Occupation.
- (d) In the event that the Owner elects to procure a Travel Plan Bond, the Owner will not Commence Development until the Travel Plan Bond is secured and is in place for the benefit of the County Council. For the avoidance of doubt the Travel Plan Bond will remain in place until the County Council has assessed whether or not the Owner has met its targets in the Travel Plan after 5 years in Occupation and has notified the Owner of the level of funds which need to be drawn down from the Travel Plan Bond (if any) relative to the extent to which relevant targets are not met. This assessment will be undertaken by the

County Council as soon as reasonably practicable at the expiry of the Fund Period.

- (e) In the event that the Owner elects to pay the Travel Plan Fund Amount to the County Council or the Owner is unable to procure a Travel Plan Bond in a form acceptable to the County Council (acting reasonably) before the Commencement of Development, the Owner shall not be required to procure a Travel Plan Bond and will not Occupy the Development until the Travel Plan Fund Amount has been paid to the County Council.

5.3 Travel Plan Co-ordinator

- (a) Not to Occupy the Development until a person or organisation with experience of travel plans has been appointed to act as the Travel Plan Co-ordinator for the duration of the operational life of the Development;
- (b) The Travel Plan Co-ordinator shall provide to the County Council an annual report of the findings and outcomes of the implementation of the Travel Plan on not less than 5 years from Occupation on each anniversary of Occupation.

5.4 Shuttle Bus Service

- (a) To operate the Shuttle Bus Service for as long as the Airport is in Operation during hours to be first agreed by the County Council taking into account any comments made by the Travel Plan Co-ordinator unless or until;
 - (i) The Shuttle Bus Service is deemed by the County Council (acting reasonably) taking into account any comments made by Travel Plan Co-ordinator to be no longer viable pursuant to a review in accordance with Clause 5.4(d); or
 - (ii) An alternative bus service provided by a commercial bus operator is secured to the reasonable satisfaction of the County Council taking into account any comments made by the Travel Plan Co-ordinator.
- (b) Prior to Occupation by commercial air traffic passengers, to agree the hours of operation of the Shuttle Bus Service (to be reviewed from time to time under Clause 5.4.(d) below) with the County Council taking into account any comments made by the Travel Plan Co-ordinator.
- (c) To procure that the Travel Plan Co-ordinator reviews the operation of the Shuttle Bus Service within 2 months of the anniversary of first Occupation by commercial air traffic passengers and taking into account any comments made by the Travel Plan Co-ordinator thereafter.
- (d) To procure that the Travel Plan Co-ordinator reviews and determines the frequency and duration of the Shuttle Bus Service having regard to operations at the Airport and the viability of the Shuttle Bus Service (defined as meeting a threshold of an average (mean) patronage of 5 per journey over the period of assessment to be considered from time to time.

- (e) To provide details of the Shuttle Bus Service and other public transport information to users and visitors to the Airport in a form and in a medium to be first approved by the County Council taking into account any comments made by the Travel Plan Co-ordinator as may be varied from time to time with the approval of the County Council.
- (f) To use reasonable endeavours to secure the diversion of a service and/or introduction of a new service from a commercial bus operators to serve the Airport and if such service is sufficient to the satisfaction of the County Council taking into account any comments made by the Travel Plan Co-ordinator to be entitled to discontinue the Shuttle Bus in accordance with Clause 5.4(a)(ii) above.
- (g) For the avoidance of doubt the Shuttle Bus Service shall only be discontinued while any commercial bus service is in operation. In the event that a commercial bus service is withdrawn, the Shuttle Bus Service will be re-instated.

5.5 Habitat Scheme

- (a) To pay to the Council the Habitat Contribution on or prior to the date, whichever is the earlier of;
 - (i) Occupation; or
 - (ii) The expiration of 14 days from receipt of written notice from the Council to the Owner that it requires the Habitat Contribution imminently to secure the transfer of land in pursuance of the purposes in Clause 6.1(b).

5.6 Keeping Open the Airport

- (a) To Operate the Airport in compliance with and to maintain at all times a Civil Aviation Authority Public Licence unless it is demonstrated to the satisfaction of the Council, as local planning authority (acting reasonably), through the submission of a Viability Assessment that the provision and operation of such Airport Facilities for Non-Commercial Purposes (as a minimum provision and operation) results in the Airport being not capable of Economic Viable Operation.
- (b) Any Viability Assessment submitted to the Council for its consideration in accordance with the provisions of clause 5.6(a) shall include, as a minimum, the information and follow the methodology set out in Schedule 1 together with all such other information reasonably requested by the Council.
- (c) Any Viability Assessment submitted to the Council in accordance with clause 5.6(a) shall be subject to independent audit at the expense of the Owner and the independent auditor shall provide advice to the Council to assist in its consideration of the Viability Assessment.

6 THE COUNCIL'S OBLIGATIONS

6.1 The Council covenants with the Owner as follows:

- (a) The Council may at its election provide some or all of the Habitat Contribution to one or more recognised nature conservation organisations with ornithological enhancement objectives but only on the basis that the use of the Habitat Contribution is subject to the terms of this Clause 6.1;
- (b) Not to use the Habitat Contribution (or any part of it) otherwise than towards the provision (including acquisition, if necessary) and management of a habitat for breeding waders or other birds;
- (c) Upon receipt of a written request from the Owner to provide the Owner with an account identifying how the Habitat Contribution (or any part of it) has been spent;
- (d) To return to the person who makes the Habitat Contribution any part of the Habitat Contribution not expended in accordance with this Deed within five (5) years of the date on which the Habitat Contribution was received by the Council together with accrued interest on that part of the unspent Habitat Contribution at the Public Works Loan Board New Maturity 1 Year rate.

7 THE COUNTY COUNCIL'S OBLIGATIONS

7.1 The County Council covenants with the Owner as follows:

- (a) Not to use the Monitoring and Surveying Costs Contribution (or any part of it) otherwise than towards the purposes of monitoring the implementation and maintenance of the Travel Plan by the Travel Plan Co-ordinator and carrying out of the Field Survey Work;
- (b) Upon receipt of a written request from the Owner to provide the Owner with an account identifying how the Monitoring and Surveying Costs Contribution (or any part of it) has been spent;
- (c) To appoint and thereafter maintain the appointment of a suitable representative of the County Council to engage with the Travel Plan Co-ordinator as required by the terms of this Deed and to consider approvals required pursuant to the obligations upon the Owner in Clauses 5.2 (a) and (c) and Clause 5.4.
- (d) To use and/or exercise the Travel Plan Fund only for the purpose of implementing measures in the area affected by the Development to mitigate the impact of the Owner's failure to meet the target modal shift as set out in the Travel Plan.
- (e) If the Owner has provided a Travel Plan Bond, upon the expiration of the Fund Period, the County Council will as soon as reasonably practicable assess whether or not the Owner has met its Travel Plan targets and will confirm this in writing to the Owner. Upon receipt of this confirmation, if the Travel Plan targets have been met in full, the Travel Plan Bond will terminate. If the Travel Plan targets have not been met in part or whole, the County Council will be entitled to (on demand) and no later than 3 months (after notifying the Owner that it has not met some or all of the Travel Plan targets) draw down the level of funds which the County Council will be entitled to receive to mitigate the impact of the Owners failure to meet the Travel Plan

targets and the Travel Bond shall then terminate. For the avoidance of doubt the County Council is entitled to draw down a sum equivalent of one per cent (1%) of the Travel Plan Fund Amount for every point one of a percent (0.1%) shortfall in the said 10% Travel Plan target.

- (f) If the Owner has paid the Travel Plan Fund Amount to the County Council:
 - (i) at the end of the Fund Period, the County Council will as soon as reasonably practicable assess whether or not the Owner has met its Travel Plan targets and will confirm this in writing to the Owner. If the Travel Plan targets have been met in full, the County Council will return the Travel Plan Fund Amount to the Owner as soon as reasonably practicable and no later than 3 months (after notifying the Owner that it has met all of the Travel Plan targets). If the Travel Plan targets have not been met in part or whole, the County Council will return any sums due to the Owner as soon as reasonably practicable and no later than 3 months (after notifying the Owner that it has not met some or all of the Travel Plan targets) and will retain the remainder to mitigate the impact of the Owners failure to meet the Travel Plan targets. For the avoidance of doubt the County Council is entitled to retain a sum equivalent of one per cent (1%) of the Travel Plan Fund Amount for every point one of a percent (0.1%) shortfall in the said 10% Travel Plan target.
 - (ii) on the expiry of 10 years from the date of Occupation, the Council will return any unexpended element of the Travel Plan Fund Amount (which it has retained in accordance with clause 7.1(f)(i)) together with any interest accrued to the Owner.
- (g) Upon receipt of a written request from the Owner to provide the Owner with an account and/or details identifying how the Travel Plan Fund Amount (or any part of it) has been spent or required to be performed.

8 AGREEMENTS AND DECLARATIONS

8.1 Registration as Local Land Charge

This Deed shall be registered in the Council's register of local land charges for the purposes of the Local Land Charges Act 1975.

8.2 Lapse

- (a) This Deed shall lapse and its obligations shall cease to have effect in any of the following circumstances:
 - (i) if the Planning Permission shall be revoked, quashed or modified other than at the request of the Owner; or
 - (ii) if the Planning Permission shall lapse before the Commencement of Development.

8.3 Release

- (a) Any person (including without limitation the Owner and the Mortgagee) shall upon parting:
 - (i) with its interest in any part of the Land be released from all obligations and duties under the terms of this Deed in so far as they relate to or are binding on that part of the Land; and
 - (ii) with the entirety of its interest in the Land be released from all liabilities whatsoever under the terms of this Deed
- (b) The releases provided for in sub-Clause 8.3(a) shall not apply to any prior or existing breach of this Deed as at the date of disposal.

8.4 Discharge by Performance

Upon the performance discharge or other fulfilment of the obligations (or any of them) under the terms of this Deed such covenant obligation or obligations shall absolutely cease and determine save in respect of any antecedent breach.

8.5 Future Development

Nothing in this Deed shall prohibit or limit the right to develop the Land (or any part of it) in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal or pursuant to the Order) after the date of this Deed.

8.6 Change in Ownership

The Owner agrees to provide the Council with written notice of any change in ownership of its interest in the Land that occurs before all the obligations contained within this Deed have been discharged within seven (7) days of any such change occurring PROVIDED THAT such notice shall include details of the transferee's full name and registered office (if a company or usual address if not) together with a plan identifying the relevant area of the Land or area of occupation (as the case may be).

8.7 Notices

Any notice to be given to any party pursuant to the terms of this Deed shall be deemed to be sufficiently served if delivered personally or sent recorded delivery service or by facsimile to the following officials or people at the respective addresses specified unless otherwise directed in writing by the recipient party:

In respect of the Council

Civic Centre

Carlisle

CA3 8AG

(marked for the attention of The Director of Economic Development)

In respect of the Owner

Stretton Green Distribution Park

Langford Way

Appleton
Warrington
Cheshire WA4 4TZ
(marked for the attention of the Company Secretary)

In respect of the Mortgagee

Laurence Pountney Hill,
London EC4R 0HH
Attention: Tony Petrou
Facsimile: 020 7548 3883

In respect of the County Council

The Courts
Carlisle
CA3 8LZ

8.8 Interest

If any payment due under this Deed is paid late interest shall be payable from the date payment is due to the date of payment at the Public Works Loan Board New Maturity 1 Year rate.

8.9 Contracts (Rights of Third Parties) Act 1999

- (a) Unless the right of enforcement is expressly granted it is not intended that a third party should have the right to enforce a provision of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999;
- (b) This Deed may be rescinded or varied without the consent of a third party to whom an express right to enforce any of its terms has been provided.

8.10 Land Ownership

Nothing in this Deed shall require the performance by the Owner of any obligation on over or under land which is not within the ownership or control of the Owner unless the said land shall comprise public highway.

8.11 Perpetuities

For the purpose of such part of this Deed as may be subject to the law against perpetuity this Deed shall remain in force for the period of eighty (80) years from the date of this Deed or (if sooner) for so long as any of the covenants conditions or obligations set out in this Deed may not have been performed.

8.12 Consents and Approvals

Where any consent approval or expression of satisfaction is required to be given under the terms of this Deed then it shall not be unreasonably withheld or delayed.

8.13 Dispute Resolution

- (a) If agreement cannot be reached on any matters contained in or referred to in this Deed that matter shall be referred and settled by a single expert to be nominated by the President of the Royal Institution of Chartered Surveyors on the application of any party after notice in writing to the other;
- (b) The person to be appointed pursuant to sub-Clause 8.13(a) shall be a person having five (5) years or more post qualification experience of developments of the scale and nature of the Development under the terms of an agreement similar in nature to this Deed;
- (c) Reference to the expert shall be on terms that determination shall take place within ten (10) days of the expert accepting his instructions;
- (d) The expert shall have the power to award the costs of the determination in favour of either party at the expense of the other;
- (e) The expert shall be limited in his findings to the proposal put by either party or a proposal falling between both of them and shall provide written reasons for his decision;
- (f) The findings of the expert shall (other than in the case of a manifest material error) be final and binding on the Parties.

8.14 Mortgagee's Consent

The Mortgagee agrees to its interest in the Land being subject to the obligations contained within this Deed PROVIDED THAT the Mortgagee shall not be liable pursuant to this Deed unless and until it enters into possession of the Land (or any part of it) as if it were a person deriving title from the Owner to the extent that such obligations are outstanding and continue to bind the Land as at the date that the Mortgagee exercises its powers .

SCHEDULE 1

CARLISLE AIRPORT VIABILITY ASSESSMENT

<u>Capital Costs</u>	<u>Note</u>
Airport infrastructure	
Freight Distribution Centre	
Total Capital Costs	1
Bank Loan drawdown / Capital Repayments	2
<u>Operating Revenue</u>	
Passenger Aviation Revenue	
Commercial Aircraft Landing Fees	
Air Freight income	
Airport Estates Rental Income	
Actual / Theoretical / Potential Freight Distribution Centre Income (having regard to all operating revenue forecasts arising from the Development)	
Stand Income From Aircraft Parking	
Aviation Fuel Sales	
Other Landing and Handling Income	
Sundry Income	3
Total Operating Revenue	(A)
<u>Operating Expenditure</u>	
Airport Staff Costs	
Airport Overhead Costs	
Aviation Fuel Costs	
Shuttle Bus Costs	
Sundry Costs	4
Total Operating Expenditure	(B)
Add In	
Net Revenue accruing to London Southend Airport from operation of Carlisle – Southend service	(C)
Less	
Interest associated with Capital Costs	(D) 5
Net Cash Flow	(A) – (B) + (C) – (D)
Internal Rate of Return (IRR)	6

NOTES TO ACCOMPANY CARLISLE AIRPORT VIABILITY ASSESSMENT

Note 1

These are the total costs incurred in carrying out the Airport Infrastructure Works and the construction of the Freight Distribution Centre as detailed in the Full Planning Application Ref 10/1116

Note 2

The Capital Costs will be partly funded by way of a Bank Loan of £10m, with Capital Repayments of £1m pa over 10 years

Note 3

This will include income for example from the Airport Café and Electricity / Utility Recharges to Airport Tenants

Note 4

This will include for example – Property Costs and Maintenance, Heat and Light, Repairs, Insurance etc.

Note 5

This is the Loan Interest associated with the level of debt funding associated with the Capital Costs. This is estimated at 4% pa

Note 6

The Internal Rate of Return is calculated by looking at the net cash flow of the project, taking into account:

- Total Capital Costs
- Bank Loan Finance drawdown and Capital Repayments
- Total Operating Revenue, including Net Revenue accruing to London Southend Airport from operation of the Carlisle – Southend Service
- Total Operating Expenditure including Bank Loan Interest in connection with the Bank Loan Finance

|

EXECUTED as a deed, and delivered when dated, by affixing the **COMMON SEAL** of **THE COUNCIL OF THE CITY OF CARLISLE**, in the presence of:

Authorised Officer

Signature :
Name :

EXECUTED as a deed, and delivered when dated, by affixing the **COMMON SEAL** of **CUMBRIA COUNTY COUNCIL**, in the presence of:

Authorised Officer

Signature :
Name :

SIGNED as a deed by **STOBART AIR LIMITED** acting by two directors or by one director and the secretary, and delivered when dated:

Director

Signature :
Name :

Director/Secretary

Signature :
Name :

|

EXECUTED AS A DEED

By affixing the Common Seal of
PRUDENTIAL TRUSTEE COMPANY LIMITED

in the presence of:-

Sealing Officer

DRAFT



Governance Directorate

Director of Governance: M D Lambert LLB (Hons), MBA.

Civic Centre Carlisle CA3 8QG Telephone (01228) 817000 Fax (01228) 817072

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Dickinson Dees
DX 727902 Newcastle upon Tyne 28

Please ask for:

Mark Lambert

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01228 817019

E-mail:

MarkL@carlisle.gov.uk

Your ref:

FMO/AM2/BRO/0706/00003

Our ref:

MDL/

By email: antonia.murillo@dickinson-dees.com

14 January 2013

Dear Sirs

Planning Application 10/1116 – Carlisle Airport

We write in response to your letter dated the 11th January.

As you already know from the report to the Committee Meeting on the 3rd August and the subsequent resolution the Council seeks (among other things) to ensure that the applicant is obliged to keep the airport open unless it can be shown that the airport is no longer economically viable. Viability was therefore already defined by reference to “economic viability”. Further, as the report and resolution also made clear, the Council wished to ensure that rental income from the distribution centre (whether received or not) should be taken into account when determining the economic viability of the airport. The section 106 will therefore define the term economic viability accordingly. The Council, unsurprisingly, has given attention to devising an appropriate methodology for determining economic viability. We sent you in our letter dated 17th December the draft viability assessment methodology which has been under discussion between the applicant and the Council. Its then status was clearly stated as “draft”.

The draft 106 Agreement as a whole is now at a firmer stage and a hard copy has therefore today been made available for inspection at the Civic Centre as well as appearing on the Council’s web site. It will also be a background document accompanying the Agenda report to the Committee Meeting on the 25th January. The draft Agreement is as foreshadowed in the report of 3rd August and above.

A copy is attached to this response. Although you do not acknowledge this, you and your clients have of course been provided with copies of documents throughout the last 25 months of the current application. Officers believe that in respect of the draft section 106 agreement, 11 days is more than adequate notice.

As you acknowledge the application is being placed before the Committee although I would emphasise that this is purely on a precautionary basis: officers do not believe that the additional material will lead to a change of view by Members.

We do not agree that the new matters are particularly complex.

We have already made our position clear that officers do not presently believe it is appropriate to permit further oral representations because views on the issues have already been set out by all of the respective parties in written correspondence/documentation. Ultimately, however, the procedure will be a matter for Councillors on the day.

You have asked for this application to be taken back to committee; self-evidently you are well aware of the issues raised by your client; and are also well aware of the resolution of the Committee at its Meeting on the 3rd August. Together those are the matters which will be addressed in the officers' report. The report will be available on Wednesday. We believe that this will give more than adequate time for consideration.

Yours faithfully

Director of Governance

Mr M Lambert
Director of Governance
Carlisle City Council
Civic Centre
Carlisle
CA3 8QG

By Post & Email markl@carlisle.gov.uk

11 January 2013

Dear Sirs

Planning Application 10/1116 - Carlisle Airport
Our client: Mr Gordon Brown

We refer to the exchange of correspondence between ourselves and the Council on 26 November, 17 and 21 December, from which several issues still remain unanswered by the Council.

First, we refer to the letter of 17 December and the draft viability assessment disclosed with that letter. The status of this document as disclosed is not clear, nor is it clear that this draft will achieve any objective as stated by the Council in its report of 3 August.

The three questions set out in our letter of 26 November have not been answered and the document disclosed raises more questions than answers in terms of how it can be the basis of a section 106 agreement in such a way that can be meaningfully enforced by the Council.

Please confirm if and when the Council intends to disclose the draft section 106 obligation to enable the public and objectors to make representations. In the event the Council does disclose the draft S106 it is highly likely this document will be complex and therefore those wishing to make representations will need sufficient time to make meaningful representations.

It is clear that the Council accepts that a material change in circumstances has taken place since this planning application was considered at the meeting in August as the matter is again going to be considered by the Development Control Committee on 25 January. We note from your letter of 21 December that it is a matter of discretion as to whether or not further representations will be heard at Committee. In this particular instance we submit that given the complex nature of the issues raised by both Aer Arann information and the draft document sent by the Council on 17 December, together with consequential matters which will clearly affect the applicant's case, that the discretion of the Council be exercised and our client or his expert be allowed to address the Committee. As such, we submit that these are exceptional circumstances which should compel the Council to allow further public participation.

We note that the Council has stated that it will comply with the legal requirement of publication of the report to Committee five clear working days before the Committee. As the matters to be

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considered are extremely complex, in this instance it is very important for all the parties to know what issues are going to be considered in the report to Committee and for this information to be notified to the parties before the Committee report is available if the report itself is only going to be available five clear working days before the Committee.

We refer to the case of *R v Rochdale Metropolitan Borough Council* [1997] ENV LR 100 in which the Court held that that the objector in that instance was entitled to documents in good time in order to make proper full and meaningful representations for consideration by the Committee. We submit that the principle in respect of this planning application is the same in that in order for our client or his expert to be able to make a meaningful response to the report which is to be presented to the Committee on 25 January, the Council, by merely adhering to the statutory minimum time limit of five days, gives insufficient time to make meaningful responses; at the very least our client is entitled to know what issues will be put before Committee on 25 January. Please therefore confirm by return what issues are to be addressed in the report.

We look forward to hearing from you.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Dickinson Dees LLP', written in a cursive, flowing style.

Dickinson Dees LLP



07 January 2013

Angus Hutchinson
Carlisle City Council
Planning Services
Carlisle
CA3 8QG

SENT BY EMAIL AND POST

Our Ref: D133185
Your Ref: 10/1116

Dear Angus,

Full Planning Application for the 'Erection of a Distribution Centre (inclusive of air freight and road haulage, and including integrated +3 C chiller chamber, +12 C chiller chamber, workshop and offices) (use classes B1 and B8), gatehouse, canteen/ welfare facilities, landscaping, new access, parking and other infrastructure works (such as auxiliary fire station, package sewage treatment works, fire sprinkler system and electrical substation) and raised and re-profiled Runway 07/25.'

We write following receipt your email of 03 January 2013 which requests that we provide a response to the letter from Dickinson Dees dated 26 November 2012. We have focussed on what appear to be the most pertinent points of the letter, which may inform the Council's consideration of the issues at, and leading up to, the 25 January 2013 committee meeting.

To confirm our understanding, we believe that no third parties are allowed to speak in relation to this matter at the 25 January 2013 committee meeting. Please advise if our understanding is incorrect.

Turning first to the points made regarding the Section 106 agreement ("S106"), we would highlight that the S106 is subject of current negotiation and discussion between the agents for the Applicant and the Council. Dickinson Dees will be appraised of the situation by virtue of the S106 becoming available once completed. However, for reassurance, we would highlight that a definition of 'economic viable operation' and a 'viability assessment' are included within the current draft S106 and are intended to remain.

In respect of enforcing viability-related S106 obligations, this is more a matter for the Council's consideration. However, we do not believe, at least at this stage, that the Council should feel obliged to spell out examples of when enforcement will be taken, particularly as the S106 is yet to be signed and the decision notice issued. Dickinson Dees might be reassured that the Council and the Applicant expect to agree the matters that will be relevant to the consideration of viability as a minimum and it is intended that an independent auditor shall provide advice to the Council to assist in its consideration of the Viability Assessment.

Turning now to the Waterford route, Aer Arran have confirmed that passenger numbers had been declining on most routes, not just Waterford to Southend over a period of time. The new, improved road links to Dublin were put in place from September 2010 and this, coupled with the poor economic environment in Ireland, led Aer Arran to review the operation of Waterford as a base generally, not just one route in isolation. It was therefore decided to cease the Southend route and others as a result of a

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generally declining market. The closure of the Waterford route has no influence in respect of the business plan prepared by Stobart for Carlisle Airport.

We would also highlight that 'Waterford' is mentioned only once in the 03 August 2012 committee report and associated minutes (this being the committee report, para 1.104, which identifies falling passenger numbers on the Waterford route) and the Council's consultants, ASA, refer to Waterford in their final report to the Council, but only insofar as identifying it as a route (at that time).

We therefore fail to see how the closure of a particular route has any material bearing on the proposed routes from Carlisle Airport or the decision made by the Council at the 03 August 2012 committee meeting.

We trust the above will assist in the Council's consideration of the matters raised in the Dickinson Dees letter. Should you wish to discuss these matters or require further information, please do not hesitate to contact the undersigned.

Yours sincerely
for **URS Infrastructure & Environment UK Limited**

Matthew Smedley
Principal Planner

Direct Line: +44 (0)113 2045031
matthew.smedley@urs.com



Governance Directorate

Director of Governance: M D Lambert LLB (Hons), MBA.

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Your ref:	FMO/AM2/BRO/0706/00003
Our ref:	MDL/

By email: antonia.murillo@dickinson-dees.com

21 December 2012

Dear Sirs

Planning Application 10/1116 – Carlisle Airport

We write with reference to your letter of today's date.

The Committee has already heard oral representations from all parties in August. It is not immediately clear what further oral representations (over and above written representations) will add in respect of the issues raised nor that fairness requires that oral representations be heard. There is no right to speak, it is a matter of discretion which will nevertheless be kept under review.

The Council will comply with the legal requirement of publication of a report to committee 5 working days before the committee. The Council cannot guarantee that it will necessarily be able to provide a report before then (and certainly it is unlikely to be ready 14 days before). The Council does not accept that 14 days is reasonable.

The unreasonableness is further demonstrated as regards your point concerning State Aid: on the 14th December your client hand delivered a letter during which he mentioned in passing that a further letter regarding the matter of "State Aid" was forthcoming. I recall that you raised this matter originally, without apology or the courtesy of attendance before the committee by yourself, only the day before the

Council meeting of 3rd August. This planning application has been extant since December 2010 (and no such issue has ever been raised by your client at any time in the last 4 or more years). In that context a requirement that anything further that you wished to be taken into account be submitted by 21st December was hardly unreasonable. You now indicate that you await an opinion from your counsel some 4 ½ months after you had raised the point. With respect this is unacceptable. With reference to our letter dated 24th October 2012 we shall first await sight of your opinion.

Finally, as regards the date of our response to your letter dated 17th December, naturally we gave appropriate consideration to the points raised. We have moreover confirmed that the matter will be taken back to committee. Your letter and those of your client will be referred to. It has not been suggested by you or your client that you have omitted to say something in those representations; so, apart from the State Aid issue (following the indication from your client) we were (and are) not expecting any thing else.

Yours faithfully

Director of Governance



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Carlisle
CA3 8QG

By Post & Email markl@carlisle.gov.uk

21 December 2012

Dear Sirs

Planning Application 10/1116 - Carlisle Airport
Our client: Mr Gordon Brown

We thank you for your letter of 17 December and understand that the Council does not intend to allow any members of the public to speak at the committee meeting. Given that the Committee that is to meet on 25 January will be the Committee that formally determines this application and given the history of this matter and its importance to our client, as a matter of fairness, it is appropriate that he or his expert should be entitled to speak at the meeting. We look forward to receiving your confirmation this will be permitted.

The meaning of your letter of 17 December is not clear. Please confirm that our client will have a reasonable opportunity (ie. 14 days) to see the officers' report to the 25 January committee meeting, and make representations in respect of it.

The time frame given for the submission of further information, given the time the Council has taken to respond to our letter of the 26 November, is unreasonable and we reserve our position in relation to making further submissions regarding State Aid. You will be aware that the Civil Aviation Act 2012 has just received Royal Assent and we are considering the implications of that statute as regards this planning application. We refer to your letter of 24 October and your suggestion that there be an exchange of the advice relating to State Aid, we would propose to do so when the full advice is available rather than do so on a piecemeal basis and it is unlikely that we shall be in a position to do so before the Christmas holiday period begins.

We look forward to hearing from you.

Yours faithfully

Dickinson Dees LLP

UMAIN21761406.1



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Governance Directorate

Director of Governance: M D Lambert LLB (Hons), MBA.

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Your ref:	FMO/AM2/BRO/0706/00003
Our ref:	MDL/

By email: antonia.murillo@dickinson-dees.com

17 December 2012

Dear Sirs

Planning Application 10/1116 – Carlisle Airport

Thank you for your letter, dated 26 November 2012, concerning the above matter.

I am grateful for you bringing to the Council's attention the recent announcement made by Waterford Airport. I confirm that the matter will be reported to the Council's Development Control Committee at its scheduled Meeting on 25 January 2013. Your letter will be appended to the Committee Report and the matters it raises taken into account. The matter will be considered as an ordinary Agenda Report, this means that it will not be one which engages a right to speak.

In relation to your queries concerning the section 106 Agreement, the intention is that the said Agreement will require a financial appraisal of the Airport operation to ascertain whether it is capable of operating as an Economic Viable Operation. 'Economic Viable Operation' will be defined in the Agreement. I attach an extract of the draft viability assessment from the current draft s106 agreement.

On the 14th December your client hand delivered a letter during which he mentioned in passing that a further letter regarding the matter of "State Aid" is forthcoming. If you wish anything further to be taken into account at the Committee Meeting on the 25th January it needs to be submitted by Friday the 21st December 2012.

Yours faithfully

Director of Governance

CARLISLE AIRPORT VIABILITY ASSESSMENT - DRAFT

Capital Costs

Note

Airport infrastructure
Freight Distribution Centre

Total Capital Costs 1

Bank Loan drawdown / Capital Repayments 2

Operating Revenue

Passenger Aviation Revenue
Commercial Aircraft Landing Fees
Air Freight income
Airport Estates Rental Income
Actual / Theoretical / Potential Freight Distribution Centre Income
Stand Income From Aircraft Parking
Aviation Fuel Sales
Other Landing and Handling Income
Sundry Income 3

Total Operating Revenue (A)

Operating Expenditure

Airport Staff Costs
Airport Overhead Costs 4
Aviation Fuel Costs
Shuttle Bus Costs
Sundry Costs

Total Operating Expenditure (B)

Add In

Net Revenue accruing to London Southend Airport from operation
of Carlisle – Southend service (C)

Less

Interest associated with Capital Costs (D) 5

Net Cash Flow $(A) - (B) + (C) - (D)$

Internal Rate of Return (IRR)

6

NOTES TO ACCOMPANY CARLISLE AIRPORT VIABILITY ASSESSMENT

Note 1

These are the total costs incurred in carrying out the Airport Infrastructure Works and the construction of the Freight Distribution Centre as detailed in the Full Planning Application Ref 10/1/16

Note 2

The Capital Costs will be partly funded by way of a Bank Loan of £10m, with Capital Repayments of £1m pa over 10 years

Note 3

This will include income for example from the Airport Café and Electricity / Utility Recharges to Airport Tenants

Note 4

This will include for **example** – Property Costs and Maintenance, Heat and Light, Repairs, Insurance etc.

Note 5

This is the Loan Interest associated with the level of debt funding associated with the Capital Costs. This is estimated at 4% pa

Note 6

The Internal Rate of Return is calculated by looking at the net cash flow of the project, taking into account:

- **Total Capital Costs**
- **Bank Loan Finance drawdown and Capital Repayments**
- **Total Operating Revenue, including Net Revenue accruing to London Southend Airport from operation of the Carlisle – Southend Service**
- **Total Operating Expenditure including Bank Loan Interest in connection with the Bank Loan Finance**

Lane End Farm,
Irthington,
Carlisle,
CA6 4NE
14th December 2012

Planning Application 10/1116

Dear Mr Hutchinson,

You will recall that when the Development Control Committee of Carlisle City Council met to consider the above application, the applicant and their agents, placed considerable emphasis on the prospects of commercial aviation services being established at Carlisle Airport. It is clear that both in your recommendation to the DCC (made "very much on balance") and in the members' decision making process, that weight was placed on such prospects.

It is not necessary to reiterate in detail why this objective is a fallacy. York Aviation, Alan Stratford Associates, Economic Consulting Agents, and The Stobart Group (when communicating with share-holders and prospective purchasers of the site) have illustrated the point to destruction. I would though remind you of the realities of micro-economics in that customers seek best value and investors seek maximum returns commensurate with levels of perceived risk. It is in relation to the supply side that I draw your attention to the links below. As you will see TSG went to the markets with a bond issue in November of this year that was later withdrawn after having spent a stated £518,000 in the process. The rate of return offered to bond purchasers was 5.5%. Co-terminus to this there has been a further fall in the share price of TSG as illustrated in the attached figure.

You will recall that in the "business plan" the applicant submitted to you in June 2012 (the one described by Ian Rowson of ECA as "Not a safe basis for investment appraisal") under the heading "Supporting Assumptions", TSG stated that the regional distribution centre and stated airside works would be financed by borrowing at LIBOR plus 3% (assumed to be 4% overall) and equity at a cost of 6p per share (valued at 155p at the time giving a cost of $6/155 \times 100 = 3.9\%$)

Two things flow from the bond flop that are material to the determination of this planning application. Firstly the reaction of the markets underscores the point that goods and services, commercial air services included, are provided by freely interacting forces of supply and demand that are outwith the scope of any planning agreement. Secondly, the assumptions made by the applicant in its submissions in June 2012 appear to be seriously flawed and it is difficult to see how the Council can justify placing any weight upon them. The higher cost of debt over and above the 4% assumed would have implications for the estimated profitability, and hence viability, of the Airport even if TSG's assumptions about the level of usage were correct. If as stated in the report to Committee, that the recommendation was on balance, it must be clear to the Council that the balance has shifted further away from the applicant.

Your original recommendation to committee, in July 2011, was based on a full and reasoned consideration of the facts and I would suggest that the most appropriate course would be to return this application to committee with that recommendation intact.

Yours Sincerely

Gordon Brown

The Airport development costs of £20.36m would be funded by a Bank Loan of £10m, repayable over 10 years at an interest rate of 3%/LIBOR, equating to an interest rate payable of 4.0%. This margin is achievable in the current lending climate and Stobart Group has secured facilities at or below this level of interest rate margin on other development projects. The balance of the funds would be provided by SGL as 'Equity' - £10.36m – which is part of the £115m net Placing Funds raised by SGL in 2011 at a share price of £1.55. Currently SGL pay a dividend of £0.06 per share.

Please see Section 4 for extract from Placing and Open Offer confirming investment to be made in Carlisle Airport. – TSG June 2012

http://www.rns-pdf.londonstockexchange.com/rns/93760_1-2012-11-12.pdf

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(STOB) Stobart Group

Chart

Plotting options

Timeframe

3 years (daily ticks)

Compare against

FTSE-250
Enter Code(s)

Graph type

Line

Plot



Advanced plotting options

Moving averages

- 1 None
- 2 None
- 3 None
- 4 None

Indicators

- 1 None
- 2 None
- 3 None
- 4 None

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Mr M Lambert
Director of Governance
Carlisle City Council
Civic Centre
Carlisle
CA3 8QG

By email: markl@carlisle.gov.uk

26 November 2012

Dear Sirs

Planning Application 10/1116 - Carlisle Airport -
Addendum Report to the Development Control Committee 3 August 2012
Our Client – Mr G Brown

We refer to the above matter considered by Committee on 3 August 2012 and, in particular, the recommendation stated to be "very much on balance, [that] the proposal is recommended for approval, subject to"- several requirements including the completion of the Section 106 Agreement including "(i) an obligation on the applicant to keep the Airport open unless it can be shown that the Airport is no longer economically viable (even with the distribution centre rental income), Objections in respect of this Application have been placed before the Council in relation to:-

- enabling development; and
- economic viability

and the integral relation between the two issues. Critical to the economic viability issue is the use of the Airport by a commercial airline providing a service for passengers and commercial freight. The commercial airline promoted by the applicant to provide such a service is Aer Arann.

Letters from York Aviation, consultants appointed to advise Mr Brown, were submitted to the Council in March and June 2012 in which the poor performance of Aer Arann was highlighted, with regard to routes to Southend Airport and in particular the route between Southend and Waterford Airport. The evidence available suggested the services provided by Aer Arann were vulnerable to cancellation, an example being that Aer Arann had already ceased operating on the route between Southend and Galway. Having identified the vulnerability of such services to cancellation on the basis of those services not being viable for Aer Arann, it was considered highly likely that any service proposed to or from Carlisle Airport would suffer a similar fate.

We refer you to paragraphs 1.101 to 1.110 of the Committee's Report where concerns regarding the viability of services were set out, recording the view of York Aviation and the view of Allan Stratford Associates (ASA'), the Council's consultant. Paragraph 1.110 records that ASA believes that commercial air passenger services from Carlisle would be of borderline financial viability for Aer Arann or any other operator.

In its presentation to the Committee, the applicant and its consultant, Mott MacDonald, placed particular emphasis on the prospect of services to and from Carlisle being operated by Aer Arann, citing Southend Airport as a precedent. This appears to have been influential in persuading the Committee to grant planning permission in the expectation of at least some level of commercial air services. In particular, claims were made in the Business Case submitted by the applicant that the

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services from Southend and Luton had stimulated the market compared to the position when Aer Arran was operating only from Luton. In fact passenger numbers carried between Southend and Luton combined were less than were previously carried when all services operated to Luton alone. This is made clear in the recent press release from Waterford Airport.

We attach a copy of that announcement made by Waterford Airport earlier this month, which has just come to the attention of our client. You will see that the announcement confirms that all operations by Aer Arran from Waterford Airport, including routes to Southend, Luton and Manchester, will cease. In its press release, Waterford Airport highlighted the adverse impact which the relocation by Aer Arran of its services, to Southend (those services previously have operated from Luton) had caused to the performance of the route. It is relevant to note that, in the 12 months at the end of October this year, passengers carried on the Waterford based aircraft across all three routes were 66,756 according to the Civil Aviation Authority Airport's statistics. This confirms the assessment carried out by York Aviation in its letter dated 12 June 2012 that operating at the levels of demand likely to be attracted to use services to and from Carlisle will not be viable if operations from Waterford were not viable for the airline. We refer to paragraph 1.108 of the Committee Report. The Council's consultants, ASA, advised "that the number of passengers by the twentieth year would be approximately 67,800.00....." It is clear therefore, that if the 66,756 passengers carried by Aer Arran on the Waterford routes were insufficient to sustain those routes, on the Council's own consultant's calculations, passenger numbers flying from Carlisle will not be able to sustain the proposed routes even in the long term.

The cessation of services between Southend and both Galway and Waterford demonstrates that Aer Arann, which now flies solely as Aer Lingus Regional, is clearly not bound to operate routes which are not viable, even where those routes include an airport owned by a shareholder in Aer Arann, the Stobart Group.

The cessation of all operations from Waterford Airport by Aer Arann is clearly a material consideration in relation to one of the principal issues raised by this planning application, namely whether there was a reasonable prospect that commercial passenger services from Carlisle Airport would be viable in future. The reservations expressed by York Aviation and ASA, the Council's advisors, as to this matter, are shown to be well-founded. Conversely, the present position regarding Aer Arann must detract from the evidence provided by the applicant, and Aer Arann, to the local planning authority. This factor carries even greater materiality and weight where, as in the planning officers' view, the recommendation given to Committee was "very much on balance".

The Council, in common with any local planning authority, has the power to revisit a resolution to grant planning permission, before the formal grant of planning permission, if new information of material relevance is drawn to its attention, or where there is a material change in circumstances: *R (Kides) v South Cambridgeshire District Council* [2002] EWCA Civ 1370; [2003] 1 P. & C.R. 19. A local planning authority such as the Council has a duty to consider whether it should revisit a resolution in such circumstances. This new information regarding the position of Aer Arran and the decline in its commercial operations is something which the Council as local planning authority must take into account before it moves to grant planning permission, because these matters are of considerable relevance and importance to the matters discussed in the officers' report and the recommendation to the committee.

If the Council moves to grant planning permission without taking into account this further material information, and consider its implications, the Council will have failed to take account of a relevant material consideration and its decision would clearly be susceptible to challenge by way of Judicial Review. In the circumstances, we shall be grateful if you will please confirm that the above information will be referred to the Development Control Committee in order that it can revisit its resolution to grant planning permission. Please confirm when this is likely to take place.

We note also that the recommendation to the committee was to grant planning permission subject to a section 106 obligation which required that the Airport be kept open "for so long as it is viable to do so by a competent operator with any assessment of viability taking account of the rental value from the proposed development". Please confirm (1) how the Council intends to define "viability"; (2) how it intends to set the methodology for assessment of viability; and (3) what threshold or measure of viability will the Council adopt in the enforcement of this planning obligation?

We look forward to hearing from you.

Yours faithfully

Dickinson Dees LLP



News Archive

- » 2012
- » 2011
- » 2010
- » 2009
- » 2008
- » 2007

Arrivals



Departures



Flights



Waterford Airport disappointed at Aer Lingus Regional cessation of London and Manchester routes

November 2012

Waterford Airport has expressed disappointment at the decision of Aer Lingus Regional to discontinue their London Luton, Southend and Manchester services from early January 2013 and withdraw their base from Waterford at that time. The flights are operated by Aer Arann who began flying from Waterford in 2003.

Acknowledging that Aer Arann's business problems have been well documented, Graham Doyle, CEO, Waterford Airport said: "We have been aware of Aer Arann's difficulties since before their ownership in 2010 and continued to work with them through these challenges. Regrettably, however, the airline has limited its capacity on the Waterford routes. This has been due to issues elsewhere in their business rather than the market in the Southeast region with a population of almost 500,000.

"This has seen services reduced on the consistently high-performing London Luton route in favour of Southend Airport, whose owners are now also Aer Arann's largest shareholder. The Southend route performed poorly by comparison so that even a major marketing push by Waterford Airport and our partners could not fully mitigate this switch.

"It is clearly a blow to have key UK routes withdrawn in these particular circumstances and is especially disappointing given that the Aer Lingus Regional brand was only introduced at Waterford as recently as late March of this year – just over seven months ago. We were delighted to be working with the Aer Lingus brand but our understanding is that the decision arises from the sale of an aircraft by Aer Arann that necessitates them further cutting their route network.

"As well as the potential impacts for airline and airport staff, we are very aware of the effect this development will have on business and leisure passengers in to and out of the Southeast," he continued.

From an airport perspective, Mr Doyle said no effort is being spared to replace these routes for 2013 and beyond. "While it's very early days, we are guardedly optimistic that the business case for operating between Waterford and these important destinations will be attractive to another airline, as proved to be the case when Flybe took up the Birmingham route after it was dropped by Aer Arann. We will also now liaise with all stakeholders including the Dept of Transport, Tourism & Sport as well as the State agencies concerned with inward investment and tourism – all of whom continue to work closely in support of the airport.

"The level of investment that there has been in tourism infrastructure in Waterford as well as the planned 'Medieval Mile' project in Kilkenny make it even more vital that we maintain and build on regular passenger services from our nearest neighbour and biggest trading partner."

Flybe continues to operate from Waterford to Birmingham. A wide range of European destinations are also offered on single transaction booking from Waterford via Birmingham. Waterford Airport is the location for a busy Irish Coast Guard base operating from a purpose built facility while the airport also has an active general aviation business.

Further information about services at Waterford Airport is available at www.flywaterford.com

[Skip to Top >>](#)

Economic Development

Director **J E Meek** BSc (Hons) Dip TP MRTPI

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Mr D Ransley
Oakfield House
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Case Officer:

Direct Line:

E-mail:

Your Ref:

Our Ref:

Angus Hutchinson

01228 817173

AngusH@carlisle.gov.uk

ARH/DC/10/1116

17 December 2012

Dear Mr Ransley

Proposal: Erection Of A Distribution Centre (Inclusive Of Air Freight And Road Haulage, And Including Integrated +3 °C Chiller Chamber, +12°C Chiller Chamber, Workshop And Offices)(Use Classes B1 And B8), Gatehouse, Canteen/Welfare Facilities, Landscaping, New Access, Parking And Other Infrastructure Works (Such As Auxiliary Fire Station, Package Sewage Treatment Works, Fire Sprinkler System And Electrical Substation) And Raised And Re-Profiled Runway 07/25

Location: Carlisle Lake District Airport, Carlisle, Cumbria CA6 4NW

Appn Ref: 10/1116

Thank you for your letter dated the 26th November.

Further to its contents you will be aware that when the application was first reported to the Council's Development Control Committee in July 2011 it was recommended for refusal. As highlighted in the Addendum report for the Meeting in August 2012, further information was received on those matters relating to costs and viability. There is no inconsistency between the two reports but, rather, is a reflection of the balance having changed. Needless to say, Officers will continue to give independent advice based on the available information.

This aside, I can confirm that the matter will be reported to the Council's Development Control Committee at its scheduled Meeting on 25 January 2013. Your letter will be appended to the Committee Report and the matters it raises taken into account. The matter will be considered as an ordinary Agenda Report, this means that it will not be one which engages a right to speak.

If you wish anything further to be taken into account at the Committee Meeting on the 25th January it needs to be submitted by Friday the 21st December 2012.

Yours sincerely

Angus Hutchinson
Principal Planning Officer

Oakfield House
Irthington
Carlisle
Cumbria

26th November 2012.

Carlisle City Council
Civic Centre
Carlisle
CA3 8QG

For the attention of Mr Angus Hutchinson

Dear Angus,

Planning Application ref 10/1116 - Carlisle Airport Air Freight Distribution Centre.

Further to my email of the 15th November (10.28pm) and your emailed response of 19th November (9.58am) I thought this warranted some further correspondence and apologise if it comes across as a bit of a rant.

This is not a new argument but merely reinforces all the findings of both ASA and York aviation and underlines the reality of the situation.

You ask for my understanding in all of this, and have to say it's confusing at best, and I'm closer to it than most - even your good self in some areas.

Having tried to make sense of your report and followed this saga for over 6 years now; what is not clear is:

1. The understanding of any "planning objective" for CCC over this application.
2. Why you took such a massive U turn in that last 12 month deferment period, despite the "additional" (development saving) information failing under scrutiny.
3. Why the resultant scathing criticism from ALL concerned which weakened the case for the applicant appears to have been unreasonably rejected.

Notwithstanding the content of your report, please will you be good enough to elaborate on the above points for me; it's all incredulous to me and rather worrying.

On the flip side of things,

4. What is clear from these recent articles is that Air Arran will not operate unprofitable air routes similar to Carlisle / Southend – i.e. those given so much weight by the Developer but dispelled by ASA & York aviation as unrealistic.
5. What is clear from experience is that 50 years of trying to attract custom from any UK or overseas market has failed despite being Council owned and supported by BFNL.
6. What is clear is that even the previous tenant (very successful businesses with established aviation links in Ireland Belfast City Airport) and hundreds of millions of personal fortune at their disposal sold it on.
- 7.

And finally,

8. What was abundantly clear, from the deliberation of Members at the 3rd August DCC meeting, is that they are definitely expecting a shiny new Commercial Airport.

You will recall, on the production of your final report Angus, you told me that "*sometimes you can get too close to something and you miss the overall benefit it brings*"...

Perhaps you would be good enough to explain these "benefits" to me now, in few short words, as I have failed to grasp it from the information I have reviewed so far.

And finally for clarity, please can you give me your professional opinion on whether the advise given from ASA (and others consultants commissioned with public money) has been properly considered in a reasonable and balanced manner, responsibly and rationally, and in line with the adopted guidelines instigated by the Audit Commission after their investigation into the quashing of the previous Airport application and without unnecessary risk to Public funds.

I ask you this, as last time in Court, all the fingers pointed at the previous Planning Officer having a bad day at the office which I did not believe for one minute.

I await your response to paragraphs 5, 9 and 10 (***in bold italics above***) at your earliest convenience.

Yours faithfully,

Dale Ransley.

Angus Hutchinson

From: Angus Hutchinson
Sent: 19 November 2012 09:58
To: 'dale ransley'
Subject: RE: Carlisle Airport Application 10/1116 - More evidence to consider

Dale,

Many thanks. Can you please confirm your understanding of how the information contained in the News and Star article and the Waterford Airport web page materially changes the circumstances concerning Carlisle Airport?

Regards

Angus

Angus Hutchinson
Principal Planning Officer
(Development Management)
Economic Development
Carlisle City Council
Civic Centre
Carlisle CA3 8QG
Direct Dial: (01228) 817173
Email: Angush@carlisle.gov.uk

From: dale ransley
Sent: 19 November 2012 00:02
To: Angus Hutchinson
Subject: Carlisle Airport Application 10/1116 - More evidence to consider

Angus,

As discussed I thought this lot would interest you.

If Air Arran is unable to sustain the Waterford/Southend link despite having a c500k core catchment area and the little matter of St George's Channel in the way, the possibility of any Carlisle/Southend service with the problems of established competition and a direct rail link in 3 1/4 hrs are obvious.

Applying any weight to the claims of the applicant in this area is irrational.

Isn't it about time you all stood up to be counted and did what you know is right.

For record purposes, if you think I have this wrong please can you explain to me where and why.

Regards,

Dale Ransley

<http://www.newsandstar.co.uk/news/business/airline-shake-up-no-danger-to-carlisle-airport-1.1012931?referrerPath=2.880/home>

http://www.waterfordairport.ie/index.php?option=com_content&view=article&id=243&Itemid=200



Governance Directorate

Director of Governance: M D Lambert LLB (Hons), MBA.

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Your ref:

Our ref:

Mark Lambert

01228 817019

MarkL@carlisle.gov.uk

FMO/AM2/BRO/0706/00003

MDL/

24 October 2012

Dear Sir

Planning Application reference 10/1116: Stobart Air – Carlisle Airport

I refer to your letter, dated 21 September 2012, concerning the above matter and, firstly, may I apologise for the length of time it has taken to reply but we wanted to do our utmost to ensure that we dealt with the requests made in your letter as fully as possible. Using your numbering, I respond as follows:

1. The additional information referred to in the Minutes comprised: the contents of an e-mail from URS sent on the 22.06.12; a "Sensitivity Test of Development on Study Area Roundabouts"; Calculation of 2012 to 2025 Growth Rate; Linstock Roundabout Modelling Output; Site Access Roundabout Modelling Output; Brampton Roundabout Modelling Output; Congestion Reference Flow Calculation for Sections of A689; Actual network flow compared to Congestion Reference Flow; letter from Stobart Group dated 05.07.12; EKOS Ltd "Economic Impact Appraisal Update: Carlisle Airport" June 2012 and consequent changes to the Environmental Statement: Volume 1 with particular regard to paragraphs 4.51, 4.53 and 4.55.
2. A copy of all of the correspondence with Natural England in our possession regarding the draft and final Appropriate Assessments and protected species is attached. This is provided in chronological order for ease of reference.
3. The amount of funding required to enable the undertaking of a habitat mitigation scheme was calculated following discussions between the applicant's agent, the RSPB, Natural England and Cumbria Wildlife Trust and also taking in to account information relating to the previous, recent scheme. I attach a letter from Cumbria Wildlife Trust, dated the 21 January 2011, which refers to a meeting

held in November 2010. In relation to the sum established on the basis of the previous scheme, Lloyd Bore has recently concluded that the financial contribution would lead to adequate mitigation for the habitat loss associated with the current proposal.

4. With regard to properly considering the implications of the State Aid point which you raised, the first stage was to clarify your concern. This occurred to some extent by virtue of your second letter, dated 23 August 2012. We have carefully considered the points you raise and have sought specialist Counsel's Opinion. You are now seeking a copy of the said advice. I am prepared to consider disclosing the same to you but as part of an open and transparent process. Accordingly, please confirm that you will provide the Council with a copy of any advice that you have given or received on this particular issue. In the spirit of openness and transparency we do not have any objection to receiving any representations that you may wish to make.
5. The Addendum report and minutes of the August Committee Meeting make it clear that the local planning authority does not believe there is any intention by the Council, as landowner, to dispose of its freehold interest yet you refer to the 'proposed disposal' of the same. For the avoidance of doubt, there is no proposed disposal under consideration at this time.
6. There have not been any discussions of this nature with the Applicant. Accordingly, I am able to state that there has not been any express or implied statement from them that any underwriting of costs would occur should a challenge be made. The Council, as Local Planning Authority, has sought to determine the application before it in an open and transparent manner. As you would expect, we have processed the application in such a way as to seek to properly comply with the required procedures.

In conclusion, you will note that the Secretary of State has indicated that the City Council may continue to deal with the planning application. I will keep you advised of progress but, as you know, the decision notice will not be issued until the Section 106 has been completed and this is the subject of ongoing negotiations.

Yours faithfully

Director of Governance

Mr M Lambert
Director of Governance
Carlisle City Council
Civic Centre
Rickergate
Carlisle
CA3 8QG
By Post & Email

21 September 2012

markl@carlisle.gov.uk

Dear Sirs

Planning Application reference 10/1116 - Carlisle Airport
Environmental Information Regulations 2004 - Request for Information

We refer to the special meetings of the Development Control Committee on 6 July 2012 and 3 August 2012 and the minutes available recording the decisions of those meetings.

1. The minutes of the July meeting record that additional information was received by the Council from the applicant in relation to the Environmental Statement. In order that we are clear on this point can you please confirm to what additional information the minutes refer.
2. Please send us copies of all documentation including correspondence (and for the avoidance of doubt including all correspondence with Natural England) and draft and full Appropriate Assessments relating to the Upper Solway Marshes Flats and Marshes SPA and the River Eden SAC and otherwise in respect of protected species (and including Natural England's position regarding Great Crested Newts as referred to in the first part of the resolution of Development Control Committee on 3 August 2012).
3. Resolution 3(ii) of the above Committee requires a S106 obligation comprising "*the payment of £100,000 in order to enable the undertaking of a habitat enhancement scheme to benefit breeding waders*". Can you please confirm how the amount required has been calculated and provide us with all relevant documentation including correspondence with Natural England.
4. Resolution 2 of the above Committee makes the issue of planning permission conditional upon "*the receipt of appropriate advice regarding the implications of the Commission's guidance on the "financing of Airports and Start-up Aid to Airlines Departing from Regional Airports" (2005) and State Aid*". Please confirm what process is being followed in respect of obtaining such advice and confirm that we will (a) be provided with a copy of the advice once received by the Council; and (b) afforded a full and fair opportunity to make representations to the Council in respect of it.

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5. Please confirm the procedure the Council has undertaken in respect of the proposed disposal of its Freehold Interest in the Airport and whether such a disposal will be in respect of the whole or part of that Interest. Please also supply the relevant documentation including committee reports and minutes in respect of the consideration of such a disposal.
6. Please confirm if the Applicant has expressly or impliedly confirmed it will underwrite the legal costs of challenge to the grant of this planning permission 10/1116 should such a challenge be made.

The Council will appreciate the time limits for providing a substantive response to the above requests for information, we therefore look forward to receiving the information requested as soon as possible.

Yours faithfully

Dickinson Dees LLP



Department for
Communities and
Local Government

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Please ask for: Karen Partridge
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Your ref: FMO/AM2/BRO/0706/00003

Our ref: NPCU/RTI/E0915/70933

Date: 18 September 2012

Dear Dickenson Dees

Planning Application No 10/1116, Carlisle Airport.

I refer to my letter of 6 September about the above planning application.

The Secretary of State has carefully considered this case against call-in policy, as set out in the 1999 Caborn Statement. The policy makes it clear that the power to call in a case will only be used very selectively. The Government is committed to give more power to councils and communities to make their own decisions on planning issues, and believes planning decisions should be made at the local level wherever possible.

The Secretary of State has carefully considered the impact of the proposal and the key policy issue of economic development which this case raises. In his opinion, the proposals do not: involve a conflict with national policies on important matters; have significant effects beyond their immediate locality; give rise to substantial regional or national controversy; raise significant architectural and urban design issues; or involve the interests of national security or of Foreign Governments. Nor does he consider that there is any other sufficient reason to call the application in for his own determination. He has therefore decided the application should be determined at local level, and has not called it in.

In considering whether to exercise his discretion to call-in the application, the Secretary of State has not considered whether the development proposed is "EIA development" for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The local planning authority responsible for determining the application remains the relevant authority responsible for considering whether the 1999 Regulations apply to the proposed development and, if so, for ensuring that the requirements of the 1999 Regulations are complied with.

I appreciate that this is not the preferred outcome for your client. It is however, now for Carlisle City Council to determine this application.

Yours sincerely

Karen Partridge
Planning Casework Manager

The Secretary of State for Communities and Local
Government
Eland House
Bressenden Place
London
SW1E 5DU

22 August 2012

Dear Sir

Town and Country Planning Act 1990 - Section 77
Town and Country Planning (Development Management Procedure) Order 2010

Local Planning Authority - Carlisle City Council
Planning Application 10/1116 - Carlisle Airport

Proposed Development - Erection of a Distribution Centre (inclusive of airfreight and road haulage, and including integrated + 3°C chiller chamber, + 12°C chiller chamber, workshop and offices), (Use Classes B1 and B8), Gate House, Canteen/Welfare Facilities, Landscaping, New Access, Parking and other infrastructure works (such as auxiliary fire station, package sewerage treatment works, fire sprinkler system and electrical sub-station) and raised and re-profiled runway 07/25 - Applicant Stobart Air Limited

We act on behalf of Mr Gordon Brown who has objected to the above planning application. The application is a departure from the development plan and was considered by the Development Control Committee of Carlisle City Council on 3 August 2012. The decision of the committee was that planning permission should be granted subject to a Section 106 Agreement and further advice regarding the issue of state aid. As at the date of this letter, planning permission has not been issued.

The purpose of this letter is to seek that the Secretary of State issue a holding direction pursuant to Article 14 of the above Order and that the matter be called in for determination by the Secretary of State.

Background to this application

This is the third planning application for this site made by this applicant. The first application with planning reference 07/1127 was called in by the then Secretary of State by way of letter on 18 June 2008 (reference PNW/5163/219/24). That application included airside and non-airside works as well as a replacement runway. The applicant withdrew that application shortly before it was to be considered by Public Inquiry. A second planning application for the erection of a freight storage and distribution facility including chilled cross dock facility (Use Class B8) with associated offices (Use Class B1) Gatehouse/Office/Canteen/Staff Welfare Facilities, landscaping, new vehicular

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access, car and lorry parking and other infrastructure works was made in Autumn 2008 and permission was granted by the Council in March 2009. The "other infrastructure works" identified in the application included airside works and works to runway 07/25. Those works had not been considered as part of the Environmental Statement although an intrinsic part of the development. The planning permission for this second proposed development at Carlisle Airport Ref: 08/1052 was quashed by the Court of Appeal in May 2010.

This present application made in December 2010 includes proposed airside and non-airside works. The size and nature of this third application is significant and is considered by the Local Planning Authority to be a departure application from the Development Plan as is stated in its report to Committee of 3 August. First, this application shows proposed facilities for at least 11 parked aircraft (plan drawing No. PL D133593/PI/001) which gives a significant capability for aviation use. Secondly the proposed development includes a large building identified as an Airfreight Distribution Centre stated to be 15.611 metres in height - see drawing No. D133593/A/1003. The application site is on raised ground. The proposed size of the Air Distribution Centre building is grossly in excess of that required for air freight, notwithstanding the annotations on the plans submitted. It has been accepted by the local planning authority that this building will fail to be used mainly for road haulage by the applicant, Stobart Air Limited, part of the Stobart Group.

The proposed use of the site is for a 24 hour, 7 day a week use in addition to which there are 141 HGV parking spaces. This number of HGV parking spaces is a mismatch in terms of any air freight that could be channelled through the airport. The application site is very close to Hadrian's Wall, a National Heritage site. The whole of the application site is within the buffer zone of Hadrian's Wall. The analysis of the Council's own experts is that at best the economic viability arguments are marginal and "raise strong doubts that the aviation benefits (beyond the retention of general aviation in its current form) will be achieved." - see paragraph 1.170 Report of 3 August. Our client's experts concur with this view. The proposed use then becomes a Freight Distribution Centre in the middle of the open countryside with no real need to be located at the airport.

There are alternative sites where a road haulage use would be sustainable taking into account vehicular numbers, both car and lorry, use of brownfield sites and allocated employment sites. The location for this proposed development will generate many more vehicular movements, will build upon land used for agriculture and will have a significant impact on Hadrian's Wall given the height and massing of the Freight Distribution Centre.

Consideration of the Application by Carlisle City Council

The application was due to be considered by the Development Control Committee on 15 July 2011. The recommendation at that time was a recommendation to refuse permission and the reasons given were:-

1. The proposed Distribution Centre and associated development is not considered to be inward investment, relates primarily to road haulage that does not have a need to be located at the Airport, and does not involve a local business in the Brampton area. The proposal is therefore contrary to Policy EC22 of the Carlisle District Local Plan 2001 - 2016. No convincing evidence has been presented regarding the effectiveness of the proposed Distribution Centre as enabling development, with the forecasted flights for passengers and freight considered not to be realistic. It is considered that the conflict with the Development Plan is not outweighed by the unsubstantiated socio-economic benefits.
2. The proposed Freight Distribution Centre is a major generator of travel demand. Carlisle Airport cannot be regarded as being a major transport interchange, nor is it near such an interchange. Despite the contents of the submitted Travel Plan, by far the most convenient means of travelling to and from the airport will remain the car. This is at a time when no convincing argument has been advanced that there is an essential need for the road haulage use to be located at the Airport that could not be addressed by the redevelopment of existing and available allocated sites in an identified sustainable development location. It is therefore

considered that the proposal would not meet sustainability objectives in terms of being located at or near a transport interchange and address the need to reduce the length and number of motorised journeys contrary to paragraph 42 of the Supplement to PPS1, paragraph 6 of PPG13, policies DP5 and RT5 of the North West of England Plan Regional Spatial Strategy to 2021, the underlying objective is a Policy T31 of the Cumbria and Lake District Joint Structure Plan 2001 to 2016, Policy RT5 of the Local Transport Plan, and Policy DP1 of the Carlisle District Local Plan 2001 to 2016.

3. The Airport sits within a generally rolling and undulating landscape that is relatively open with southern frontage onto the A689 and the Hadrian's Wall Path National Trail with interconnecting public rights of way to the North and East. In such a highly visible location the proposed Distribution Centre and associated structures and lighting would have an adverse effect on the landscape character and an adverse effect on visual amenity from the East, South East, along the Hadrian's Wall Path from Oldwall to Chapel Field, and the A689. The proposal is therefore considered contrary to Policies E34 and E37 of the Cumbria and Lake District Joint Structure Plan 2001 – 2016 and Policies DP3 and CP1 of the Carlisle District Local Plan 2001 – 2016.

The applicant withdrew the application from the meeting in July 2011 and submitted further information to the Council. The application was due to be considered at the Development Control Committee of 6 July 2012. That report was presented as an addendum to the original report prepared in 2011 and had no recommendation to Council members. That special meeting of the Committee was deferred and a third report was prepared and in fact was a second addendum to the original report of July 2011.

The August report represented a last minute and significant change in the way the case for the proposed development was presented. In the July 2012 report it was stated that the "planning objective and benefit" is that the "airport is capable of economic operation as a commercial airport". The August report changed the planning objective and recommended granting permission in the hope the new development would enable the airport to continue to operate on its current general aviation basis for an unguaranteed and unspecified period of time. No cogent argument was made in the August report that this application, treated as an enabling development, would bring public benefits that were demonstrated clearly to outweigh the harm that would be caused.

The addendum report was considered at a special meeting of the Committee on 3 August. The Committee recommended authority to issue approval be granted to the Director of Economic Development subject to:-

1. Clarification on Natural England's position regarding the Great Crested Newts;
2. The completion of the Section 106 Agreement including
 - (i) an obligation on the applicant to keep the Airport open unless it can be shown that the Airport is no longer economically viable (even with the Distribution Centre rental income);
 - (ii) Travel Plan obligations
 - (iii) a payment of £100,000 in order to enable the undertaking of a habitat enhancement scheme; and
 - (iv) Imposition of Conditions
3. Receipt of appropriate advice regarding State Aid

Grounds for Call In

1. We submit that this third application conflicts with National Policy on important matters including the following:-
 - 1.1 That the proposed development does not accord with the Development Plan for the area and is indeed recognised as a departure.
 - 1.2 The application will manifestly not deliver sustainable development (with reference to paragraphs 14 and 17 of the National Planning Policy Framework).
 - 1.3 The application does not promote more sustainable transport choices nor reduce the need to travel by private transport (see part 4 of the National Planning Policy Framework).
 - 1.4 The application will have a significant impact on features of archaeological importance, especially the Hadrian's Wall World Heritage site (see part 11 of the National Planning Policy Framework).
 - 1.5 The development of the airport employment levels need to be accurately assessed with reference to part 1 of the National Planning Policy Framework.
2. The second ground for Call In is that this third application gives rise to substantial regional controversy. The background to the application given above gives a flavour of the regional controversy associated with development at Carlisle Airport.

Supporting documentation:-

- Report to the Development Control Committee on 15 July 2011;
- Addendum Report dated 6 July 2012;
- Addendum Report presented to the Development Control Committee on 3 August 2012;
- Plan DL D133593/PL/001; and
- Plan D133593/A/1003.

If further information or documentation is required prior to any decision made by the Secretary of State to Call In this application, please contact the writer.

A copy of this letter has been sent to Carlisle City Council.

Yours faithfully

Dickinson Dees LLP