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Date 29 January 2013
Your ref
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Dear Mark

PLANNING APPLICATION 10/1116 – CARLISLE AIRPORT

Further to the above, this letter has been prepared to provide Members of Planning Committee with an overview of the provisions that are contained within the proposed Section 106 Agreement ("the Agreement") that is to be entered into in respect of planning application reference 10/1116.

It also responds to the matters raised by Dickinson Dees in their letter to you dated 22 January 2013 which enclosed the joint opinion prepared Gregory Jones QC and Dr Pavlos Eleftheriadis.

Parties to the Agreement

The Agreement is to be entered into by the following parties:

- the Council of the City of Carlisle ("the City Council");
- Cumbria County Council ("the County Council");
- Stobart Air Limited ("the Applicant"); and
- Prudential Trustee Company Limited ("the Mortgagee").

Principal Obligations

Travel Plan

Within six months of the first occupation of the proposed development the Applicant is required to provide the County Council with an updated Travel Plan for their approval that is to encourage sustainable travel to / from the site.

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The Applicant is required to pay a financial contribution to the County Council in the amount of five annual payments of £2,725. The first payment is to be paid on or prior to occupation of the proposed development with the remainder being paid on the first, second, third and fourth anniversaries of first occupation. The financial contribution is to be used by the County Council in reviewing and monitoring the effectiveness of the Travel Plan.

Prior to commencing the proposed development, the Applicant is required to confirm to the County Council whether it intends to procure a Travel Plan Bond or pay financial contribution in the amount of £189,393.75. The bond / contribution is to be used by the County Council to mitigate against any failure by the Applicant to meet its Travel Plan targets.

Travel Plan Co-ordinator

Prior to occupation of the proposed development the Applicant is required to appoint a Travel Plan Co-ordinator for the operational life of the development.

Shuttle Bus Service

The Applicant is required to operate a Shuttle Bus Service to / from Carlisle City Centre unless or until the County Council deem the service to be no longer viable or an alternative service is provided by a commercial bus operator.

The hours of operation of the Shuttle Bus Service is to be agreed with the County Council.

Habitat Scheme

Prior to first occupation of the proposed development (or within 14 days if requested sooner by the City Council) the Applicant is required to pay to the City Council a financial contribution in the amount of £100,000. The financial contribution is to be used by the City Council towards the provision (including acquisition, if necessary) and management of a habitat for breeding waders or other birds.

Keeping the Airport Open

The Applicant is required to operate Carlisle Lake District Airport unless it is demonstrated to the City Council that the provision and operation of the airport for Non-Commercial Purposes is not capable of being an Economic Viable Operation.

Non-Commercial Purposes is a defined term within the draft section 106 agreement and means aviation activities other than scheduled passenger or scheduled freight operations.

Economic Viable Operation is a defined term within the draft section 106 agreement.

Whether or not the operation of the airport for Non-Commercial Purposes is an Economic Viable Operation is to be demonstrated to the City Council through the submission of a Viability Assessment. The details that are to be provided to the City Council as part of the Viability Assessment are specified in Schedule 1 to the section 106 agreement.

Any Viability Assessment that is provided to the City Council will be subject to independent audit at the expense of the Applicant.

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If there is any dispute between the City Council and the Applicant as to whether the operation of the airport for Non-Commercial Purposes is capable of being an Economic Viable Operation that dispute shall be referred to an independent expert for determination.

Matters Raised by Dickinson Dees

In their letter dated 22 January 2013 Dickinson Dees comment that the Council will not be able to enforce draft section 106 agreement. Whilst no explanation is provided in respect of this it is assumed that it relates to their subsequent comment that there is no definition of viability or economic viability nor the rate of return test which has to be met.

With respect to Dickinson Dees, we are of the view that this criticism is without basis.

As is explained above, the draft section 106 agreement sets out what is required of the Applicant with regard to keeping the airport open for non-commercial purposes and the basis on which the viability of the airport will be assessed. "Economic Viable Operation" is clearly defined within the draft agreement and the matters to be addressed in the Viability Assessed are plainly set out in Schedule 1.

On this basis we are of the view that the terms of draft section 106 agreement are capable of being enforced by the City Council.

Yours faithfully

Eversheds LLP

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