

1. INTRODUCTION

1.1 Personal details

1.1.1 I am David Healey a graduate in Chemistry and Economics (Joint Honours), with an M.Sc. in Organic Chemistry and a Diploma in Management Studies. I am self employed as an Export Consultant. After many years of overseas employment in "blue chip" pharmaceutical companies I have worked for several clients including the DTI and Foreign Office on a consultancy basis. I have lived in Fleet since 1970. In May this year(2008) I stood for election as a District Councillor and was successful with a turn-out of 53%, large for local elections in this area. However, I appear at The Appeal as a local resident of Pondtail, Fleet.

1.1.2 I have been involved with these planning applications since February 2006. I volunteered to work on the Ecology aspects as part of the SPLAT team. All along I have been preparing to hand over my work to a consultant ecologist. Sadly, insufficient funds prevent this. It therefore falls on me to present the ecology. Over the last two and a half years I have been attending as many inquiries as possible to observe the procedures but I have not "appeared" nor been exposed to cross-examination.

1.2 Planning Proposal

1.2.1 Details of the applications have been well covered elsewhere so a very brief outline should suffice.

- 1.2.2 The application consists of land occupied by the former Defence Evaluation and Research Agency (DERA) at Pyestock North. The site, located to the north of Ively Road, covers an area of 47.5 ha and is now largely vacant following QinetiQ's decision to rationalise its activities. QinetiQ have developed a new corporate headquarters at Pyestock South (known as Cody Park) to the south of Ively Road.
- 1.2.3 The Pyestock applications are for a Logistic Park in varying forms and shapes. At Appeal are two applications: 07/00764/major (outline) and 07/03197/major (detailed) plus unsolicited Addenda submitted in August 2008. The developments are a combination of storage space in massive buildings with large numbers of loading bays to allow the stocking and supply to retail outlets during 24 hours every day of the week. An increasing amount of office space will also be supplied.
- 1.2.4 The site is positioned in the middle of the Thames Basin Heaths Special Protection Area (TBH SPA), two units (Sites of Special Scientific Interest, SSSI) are within 300 and 450 metres of the site.
- 1.2.5 Three other SSSIs are within 450 metres of the site, one closer than 100 metres and one that abuts the approach road (Minley Link). Seven Sites of Importance for Nature Conservation (SINCs) are involved, two and parts of a third are on site and others are directly adjacent to the site. Map A.¹
- 1.2.6 The proposed development is within 400 metres of the "no-build" zone of The TBH SPA and also, therefore, within the 5 kilometre zone as proposed by Natural England, guide lines for residential development. (Map 1)²
- 1.2.7 Ecologically there is a wide spread of interests in this area, including protected fauna and flora – birds, bats, heathlands, reedbeds etc.

¹ Map A as Appendix I

² Map 1 see App. 2

2. Summary of Ecological Issues

- 2.1.1 No Screening nor Scoping Report for either of the two applications under Appeal has been submitted.
- 2.1.2 The Ecological Section of the Environmental Statement is flawed.
- 2.1.3 Two units of the TBH SPA (SSSIs) are likely to experience undue pressure from noise, light and air pollution during six years of construction, operations and the two in combination.
- 2.1.4 There are three SSSIs (in addition to the two units of the SPA) which are not part of the TBH SPA but are very close to the application site: Fleet Pond, Basingstoke Canal and Foxlease and Ancells Meadows.
- 2.1.5 SINC's are abundant and there are some on site which will be lost. In particular "wildlife corridors" will be lost if the development is permitted.
- 2.1.6 Natural England (NE) have called for more information about endangered species (no specifics mentioned). This was eventually supplied to NE but was not made public so SPLAT.
- 2.1.7 There is no serious consideration of Climate Change and causes thereof.
- 2.1.8 No assessment of regional NO_x on SPA.
- 2.1.9 Noise assessments directed to residential population – effects on wildlife were not assessed.
- 2.1.10 Impacts on badgers not assessed.
- 2.1.11 No mitigation proposed in ES for reptiles.

3. LEGAL REQUIREMENTS AND POLICY FRAMEWORK

3.1 European Legal Requirements

- 3.1.1 Natura 2000 and the Wadensee³ case are the most frequently Raised European legal requirements on biodiversity.

³ Judgement C-127/02, European Court, Judgment of the Court (Grand Chamber) of 7 September 2004.

- 3.1.2 The Precautionary Principle, which requires decisions to be reached ONLY if there is no doubt – certainty is not the issue.
- 3.1.3 It was October 2005 when the European Court of Justice ruled that the UK had failed to transpose the provisions of The Habitats Directive into national law. The UK had not been using Appropriate Assessments on Natura 2000 sites in the correct and proper way.
- 3.1.4 In 2006 The EU Sustainable Development Strategy was adopted and it includes an objective to halt the loss of biodiversity by 2010. The UK interpretation⁴ is to “significantly reduce the rate of biodiversity loss by 2010”. The construction of the depot over 6 years (possibly up to 2015) will clearly contravene this by causing loss of biodiversity and will therefore make a significant adverse contribution.
- 3.1.5 Communications with Brussels have confirmed that commercial developments must be considered in a manner as robust as residential developments.⁵ In the event of a successful Appeal by the Appellant, Brussels may be the only remaining avenue open.
- 3.1.5 The TBH SPA is designated by European Law⁶. This requires Member States To “*take appropriate steps to avoid **pollution or deterioration of habitats or any disturbances** affecting the birds in so far as these would be significant having regards to the objectives of this Article.*”
- 3.1.6 The Habitats Directive also suggests that, if appropriate, the public should be involved with the planning applications. The public has not been involved with these applications.
- 3.1.7 An application for a new container terminal at Dibden Bay⁷ in Southampton was refused mainly because the developer failed to meet the requirements of the Conservation (Natural Habitats etc.) Regulations. It was a classic case which demonstrated the efficacy of the protection of natural habitats and the European network of habitats, Natura 2000.

⁴ Defra.gov.uk/sustainable/government, Biodiversity and Forestry

⁵ Email from Brussels: Micheal O’Brian to David Healey 27.08.07

⁶ Council Directive 79/409/EEC (the Birds Directive), and Council Directive 92/43/EEC (the Species and Habitats Directive)

⁷ Dibden Bay decision letter 20.04.04

- 3.1.8 The Aarhus Convention⁸ was introduced in Europe to allow local democracy for the environment.
- 3.1.9 A requirement of an Environmental Impact Assessment⁹, both for UK and for European authorities, is the consideration of Alternative Uses and Alternative Locations. The Appellant has not considered alternative locations which could be better sited and well away from ecologically sensitive areas.
- 3.1.10 Under the Habitats Regulations, Appropriate Assessments require cumulative and in-combination (Wadenzee) impacts to be addressed in areas close to sensitive ecological areas. The EIA has not undertaken such a task.
- 3.1.11 Sites of Special Scientific Interest are covered by the Wildlife and Countryside Act 1981 as amended.¹⁰ Planning authorities have specific duties and responsibilities in respect of SSSIs. There is a general duty to **conserve and enhance** SSSIs.

3.2 Planning Policies

- 3.2.1 Natural England is still endeavouring to establish acceptable policies for buildings close to SPAs and legally protected sites. Current guidelines are based on buffer zones of distances from the SPAs and the provision of Suitable Alternative Natural Green Space (SANGS). SANGS need not concern us at this Appeal but the distance zones will.
- 3.2.2 There are several national policy documents which are relevant to this Inquiry. OPDM circular 06/2005 – Biodiversity and Geological Conservation, Regulation 48 deals with planning permission for a development which is likely to significantly affect a European site.
- 3.2.2 PPS9 guides appropriate consideration of networks of natural habitats.

⁸ Aarhus Convention -- Postnote, January 2006 no.256

⁹ Appendix 1: consolidation of Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC (14.03.99)

¹⁰ DEFRA Countryside and Rights of Way Act 2000: Fact Sheets

3.2.3 PPS 23¹¹, *Planning and Pollution Controls*, states that the ES "must include a description of the developments, the likely significant environmental effects, **an outline of the main alternatives studied by the applicant and reasons for his/her choice** and a non-technical summary." Such an outline was absent from the ES.

The recent decision by The Secretary of State on a Strategic Rail Freight Interchange at Radlett¹² demonstrates how important consideration of alternatives is. It was one reason for refusal of the Appeal. The SoS letter and Inspector's report show how a serious examination of alternative sites can be completed.

3.2.4 The Guidance for Local Authorities on Implementing the Biodiversity Duty (DEFRA May 2007) outlines examples of the potential effects of development on biodiversity.

3.2.5 Two Hants County Structure Saved Policies (Dec.07)¹³ will be cited.

3.2.5.1 Maintenance of the Strategic Gap between Aldershot/Yateley and Fleet is clear.

3.2.5.2 Corporate Biodiversity Action Plan (July 2005) for screening of Transport Improvements.

3.2.6 Local Policies CON 1, 2, 3, 5, 6, 8 & 10¹⁴ are all breached by this development.

3.2.7 Various sections of the evolving South East England Plan will be considered.

4. PLANNING HISTORY

4.1 The site was previously a Ministry of Defence site.

¹¹ Planning Policy Statement 23: Planning and Pollution Control, Annex1: Pollution Control, Air and Water Quality, para 1.39

¹² Communities & Local Govt. letter to CGMS Ltd., Ref. APP/B1930/A/07/2045747 of 01.10.08

¹³ Hants. County Structure Plan 1996-2011, Saved Policies

¹⁴The Hart District Local Plan (Replacement) 1996-2006

- 4.2 In September 2003 a government Company, QinetiQ, submitted application SUE/03/01475/OUT. This application was for a mixed development. This was for business park for technology, with offices, a training facility/conference centre, some distribution etc. It was withdrawn in October 2006, by which time the Astral/Pru applications had been submitted.
- 4.3 In March 2005 applications 05/00242 & 05/00238/MAJOR were submitted on behalf of Astral and Prudential Farnborough. These were both for a Logistics Park (warehousing & distribution) and quite different from the earlier application. These were withdrawn in June 2008.
- 4.4 Just before Easter, 2007, 07/00764/MAJOR was submitted as an Outline Plan for a Logistics Park.
- 4.5 On Christmas Eve 2007 a new plan was delivered to HDC, 07/03197/MAJOR which was a detailed plan for a Logistics Park.
- 4.6 The current Appeal is dealing with 07/00764/MAJOR and 07/03197/MAJOR.

5. SCOPING

- 5.1 There is no Screening nor Scoping Report specifically for either of these two applications.
- 5.2 The Scoping Report for an earlier application (05/00238) was submitted without the benefit of a Scoping Opinion from Hart DC.
- 5.3 This old Scoping Report was dated 4th December 2004 but was only made available to the public(put on line) some 18 months later, June 2006.
- 5.4 The importance of the Scoping Report lies in the fact that the planning application in 2003 (by QinetiQ) was quite different to the Astral/Pru (2005) submission and yet consultees assumed they were very similar.
- 5.5 Since Dec. 4th 2004 attitudes and emphasis have moved on to consider such matters as Global Warming, Climate Change, CO2

emissions and sustainability so a 4-year old Scoping Report is outdated and inappropriate if it fails to address these issues.

- 5.6 Given the amount of time that has elapsed there is no reason to ignore these issues. Consideration of reduction of CO2 emissions may have led to examination of other forms of transport, e.g. rail or even canal.
- 5.7 See Appendix VI for full history.

6. THE ENVIRONMENTAL STATEMENT

- 6.1 Pyestock will not have a rail terminus. A rail line could substantially reduce the Carbon Footprint. A main railway line is only half a mile away. A comparable site with rail access would benefit everyone and be more sustainable.
- 6.2 Direct access to a motorway is desirable – Pyestock will be nearly two miles away from a very busy M3 junction 4A (not half a mile as erroneously and regularly claimed by Developer an issue not noted by Highways Agency).
- 6.3 Other sites already in consideration or in use for depots include Andover (2), Basingstoke, Colnbrook, Bracknell etc. Updated evaluations have also proposed that Port-Centric depots are more appropriate. Southampton is a clear option. Such a proposal would be more sustainable.
- 6.4 There are other nearby locations which have the advantage of potential rail as well as possible direct access to motorways, possibly with more labour availability. There are precedents such as Dibden Bay¹⁵ and Trupbach¹⁶ in Europe.
- 6.5 Trupbach was a case upheld by The European Court of Justice – the development was refused as other sites (less damaging to the environment) were available but not considered.

¹⁵ Dibden Bay decision letter 20.04.04 (same as ref 7)

¹⁶ Trupbach: Opinion of The European Commission of 24/04/03 & Parliamentary Questions P- 2947/03 24.10.03

6.6 Dibden Bay is of particular interest because the Inspector's first reason for refusal was:

"The Inspector considered that the Environmental Statement as originally put forward by the Applicant did not sufficiently define the development which might be authorized ..."

The Inspector also noted that *"Moreover, the Applicant had made no assessment of the effects of the proposed development on the River Itchen cSAC."*

The Secretary of State commented *"... that alternative sites could be located even in **different** regions or **countries**."*

6.7 An alternative site considered by Prologis, the current Appellant, in other applications, is at Winchfield (some 5 miles from Pyestock, but within Hart) which is close to the rail line and adjacent to the M3 – a superior location for a Megadepot with convenient potential rail and motorway access but away from the TBH SPA. The applications make no mention of this opportunity. (Appendix III) Is there really a need for still more sheds in the region? Hants & Isle of Wight Wildlife Trust certainly have their doubts.¹⁷

6.8 A competent Environmental Impact Assessment¹⁸ should:

(a) include up-to-date information

(b) be timely, allowing for natural seasons and cycles (3 months are inadequate)

(c) include alternative proposals

(d) be assessed against a zero option -- i.e. do nothing

(e) assess the integrity of the "site" (e.g. SSSIs/SPA) as a whole, including the surrounding area.

6.9 The ES has made efforts to bring information up-to-date with surveys demanded by consultees but the original base is inadequate and fatally flawed and original errors have not been corrected. Furthermore, the

¹⁷ H&IWWT Email to SPLAT 20.08.07

¹⁸ Town & Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 Statutory Instruments 1999 No.293

up-dated reports have often not been made public so there is no evidence in the public domain to confirm the work.^{19 20}

7. BASIS OF THE ECOLOGY REPORT

7.1 Scott Wilson (2003)

- 7.1.1 The two current Applications both refer to the ecology report of Scott Wilson (SW). 00764 states: "*The Ecological Assessment is based primarily upon information gathered by Scott Wilson ... Vols 1 & 2, Sept. 2003*".
- 7.1.2. The report was produced in 2003 for the different application from QinetiQ which was not a logistics park. The latest application will be the 5th time the SW report has been used in 5 years.
- 7.1.3 The TBH SPA was not designated until March 2005 so a report in 2003 could not have adequately considered the new issues.
- 7.1.4 SW and three subsequent reports report "No Badgers". Members of the public on a leisure walk were able to see badger setts from outside the site. After considerable pressure from SPLAT a badger survey was completed to confirm the presence of at least two setts. This major oversight must cast doubt on all the further pronouncements of these "experts".
- 7.1.5 There was not an assessment of the effects of expected emission pollution of 800HGVs and 9000 vehicles per day on Fleet Pond SSSI, The SPA or other SINCs
- 7.1.6 Pyestock habitats have become important refuges for those species restricted to lowland heathland. These will be lost with if the development is permitted.
- 7.1.7 The new plans by Astral/The Pru will concrete over 80% more of the land than is presently utilized. It is therefore very likely that species supported by the current habitats will lose the opportunity of travelling between component elements. Natural Corridors will be lost.

¹⁹ NE's letter with news of new surveys to HDC, ref. 07/00764/major of 02.10.07

²⁰ EHBG request for Badger survey & request for a copy of the report

- 7.1.8 The reptile survey was inadequate and no mitigation offered.
- 7.1.9 This survey was not suitable to be used as a basis for information 4 – 5 years after it was published. Not a single species count was made of flora nor fauna.

7.2 Scott Wilson (2006)

7.2.1 In 2006, three years after the original survey on Pyestock by Scott Wilson, they were commissioned to undertake an Appropriate Assessment of the Environment for the South East England Plan.²¹ This by chance required SW to revisit some of the areas covered above but with different personnel. The conclusions they made were (numbers refer to SW paragraphs):

- 7.5.2: "*.....the increases in NOx on European sites that are located within 200m of major roads will be significant.*" Thames Basin Heaths SPA lies close to A30, A323, M3, Minley Link, and Ively Road. Fleet Pond SSSI lies even closer. More recent research²² (Gauderman et al) has shown that the distance of 500 metres is more applicable to humans. Smaller animals such as birds will feel effects from a smaller dose of pollution than humans. Emissions from road traffic combine to give wider-ranging regional effects.
- 7.5.4: "*.....even a small amount of additional air pollution may prove significant.*"
- 7.5.6: "*Low level ozone is a particular problem*"
- 7.6.4: Development should be directed to areas where the risk to European sites can be minimized. Such sites exist but have not been considered by Pyestock developers.
- 7.6.4: Appropriate Assessment on local development documents and local transport plans should be carried out and should consider Air Quality. Developments should be pollution neutral.

²¹ Appropriate Assessment of the Draft South East Plan, Final Report, 31.10.06

²² The Lancet, Effect of exposure to traffic on lung development, W.James Gauderman et al, Jan.2007

- 9.1.6: Light pollution is known to have adverse effects on several nocturnal animal species.
- 9.1.7: Noise is known to have an adverse effect on breeding bird densities. Proximity to major roads can reduce breeding densities in woodlands.
- 11.1: Evidence exists that the bird species are breeding and foraging in land outside the boundaries of the TBH SPA.
- 16.12.4: Effects of increases in NOx within 200m of major roads may be significant:
 - could be felt over 200m away
 - significant dust impacts due to increased movements of heavy vehicles need to be considered.

These statements come some 3 years after the Ecology Report by SW and throw major doubts on the validity of their original report, Volume 2, the "basis of the ecology" report for these two Appeal applications.

7.3 THE ECOLOGY REPORTS

- 7.3.1 GENERAL The SW Report was not made public(put on line) until January 2008 although it was written in 2003. It does not form part of the Appendices for either application so is not supplied as a supporting document. Vol.1 has never been produced.
- 7.3.2 SW were advised about the presence of badgers on site at the time of their ecology report in 2003.
- 7.3.3 Various update surveys have been made but no record is shown of how many people participated in short visits to a large site.
- 7.3.4 There is a long history of reptiles in and around the site. The latest survey in 2008 was in the wrong month and not at the right time of year. The adequacy of the mitigation is questionable. Translocation is a difficult process at best. According to NE it would be normal for suitable receptor sites to be surveyed to ensure that the selected areas do not already contain a high proportion of reptiles. This has not been done.

- 7.3.5 Bats are almost certainly on site and are recorded as foraging on site. Access to the old buildings is difficult and rare.
- 7.3.6 There are no reports of Fungi and the area is rich in them.
- 7.3.7 The likelihood of rare butterflies on site is high because they thrive in the Eelmoor Marsh SSSI.
- 7.3.8 The assessment has not covered the habitats immediately adjacent to the site where particular effects of noise , air and light pollution may be experienced.
- 7.3.9 Noise will be 24 hours a day, everyday as compared to normal quiet at present.
- 7.3.10 Fumes from the depot and all the new traffic will travel to The SPA and SSSIs.
- 7.3.11 Birds are small animals and require much smaller doses of pollutants to be poisoned. If pollutants can harm children at 500 metres they will have a much more devastating effect on small birds within 300 metres. Whilst an Air Quality Assessment for humans has been undertaken no such consideration has been given to birds and small animals.
- 7.3.12 Hants. C. C. in their letter of 30th May 2007²³ expected The Environment Agency to comment on air quality but have been disappointed. The Environment Agency has a policy calling for an assessment but has refused to enact it at Pyestock²⁴. They claim they are only interested in areas with AQMAs²⁵ which is the case with Pyestock. (Pyestock is not in an AQMA but the HGVs will have to enter one by the undertaking to use the M3). The EA still refuses to engage with this policy.
- 7.3.13 An estimate of pollution by noise and air quality on the nearest SSSI (Fleet Pond) and SPA unit (Eelmoor Marsh) would be appropriate. This is particularly relevant and important since the developer moved the round-about towards the SPA on the Ively Road (within the 400metre exclusion zone). Air Quality has been projected against a projected

²³ Hants. C C Letter of 30th May to HDC ref E26/6(a)/07/151

²⁴ Environment Agency Policy:Transport & Spatial Planning, Jim Storey, 11.11.05

²⁵ Letter by Email from Environment Agency, Feb 2008

baseline of air quality improvements which are not being delivered. Furthermore the traffic figures for the site continue to grow.

- 7.3.14 An inadequate review of light pollution has been supplied and ignores the light effects of the Ively Road round-about itself.

7.4 DISTANCES

7.4.1 Distances:

The distances of these sensitive areas from the site are very important and the Appellant shows considerable inconsistencies in these measurements. Even Natural England seem to have difficulties in assessing these distances accurately. The variety from the Appellant has been tabulated for convenience (See Table I). Throughout the discussions with Hart DC we have been advised that they can only work with the contents of the applications and so it is likely that Hart DC will have been reading the lower(smaller) distances between site and these areas.

| Metres | Fleet Pond SSSI/ LNR | Eelmoor Marsh SSI | Bas. Canal SSI | B & L V SSSI | TBH SPA |
|---|-------------------------|----------------------|-------------------|-----------------|----------------|
| Scoping Report Dec 2004 E.S. 00764 | 150 150 | 150-200 150-200 | 250 | 200-250 250 | 200-250 300 |
| Para 5.1.4 E.S.Non- Tech 03197 | 150 | 150-250 | 150-250 | 150-250 | |
| p.7 para2.9 E.S. 03197 | 250 | 300 | 400 | 420 | 300 |
| Para.4.15 Ecology | | | | | 300 |
| 1.1.13 p.5 3.1.2 3.1.32 | 250 90 | 300 | 400 | 420 420 | 300 |
| p.21 4.1.1/.9/.10 Lighting | | | | 420 | 300 300 |
| 1.1.12 3.1.5 | | | | | 290 |

Table I

There are several factors to be considered when examining the distances between development site and sensitive areas:

- (1) Natural England accepts that significant ecological impacts can occur 200 metres from the centre of a road from the effects of traffic emissions.
- (2) Recent research by Gauderman in The USA has shown that children living within 500 metres of roadways suffer reduced lung function. Committee on the Medical Effects of Air Pollutants (COMEAP) are still reviewing the significance of this research.

- (3) The protected species in The SPA are birds (and relatively small ones). Smaller humans and animals will feel the effects of smaller doses of pollution more severely than larger beings. One is drawn to the memory of canaries being sacrificed in the coal mines for the protection of the working miners. When the bird collapsed it was time for humans to leave. The birds will therefore require smaller doses of pollution than humans and these are likely to be present at distances beyond 200 or 500 metres.
- (4) Natural England has suggested that there should be a 400metre “clear zone” between a SPA and the outer limit of a site, with no development. It has been argued that this applies only to residential matters but South East England Regional Assembly (SEERA) has stated they believe it should be for all developments. Furthermore, as shown earlier, there is no justification to delineate between residential and other developments for these applications. A map by Hart District Council shows that HDC consider Pyestock to be within the 400 metre zone. (Map 3).²⁶
- (5) The Assessor has proposed that **all** non-residential development within 1km of sensitive areas of the SPA should be individually assessed. This has SEERA support as well as, more recently, Secretary of State.

7.5 Pollution

- 7.5.1 There are three main additional elements of pollution which need to be considered for this development.
- 7.5.2 **Noise** is the subject of a separate discussion in the Inquiry. However, noise falls within the definition of “disturbance” which will affect the area both in 6 years of development but also during operation. Even the Airport does not operate at night. Locally, Brakes Brothers (a mini logistic depot in Southwood), has nighttime restrictions.

²⁶ Map 3 See App. 4

There will be a distinct change from a quiet nighttime to a 24 hour every day disturbance for the wildlife.

7.5.3 **Air** Quality is yet another element about to change for the worse. In spite of all the models, theories and hypotheses submitted in the applications there is a requirement to "improve" the quality of air. HGVs and vehicles do not do so.

7.5.4 **Light:** the site and the improved road network will be lit at night and that means no nighttime for the animals and flora. The TBH SPA is designated to save three birds, one of which is night-active. There will be no nighttime in and around the development.

7.6 Protected Birds

7.6.1 The three protected birds in TBH SPA are the Dartford warbler, the nightjar and the woodlark.

7.6.2 The Dartford warbler is increasing in numbers in the UK **EXCEPT** in the TBH SPA where it is decreasing by 40%²⁷ on the latest information. It has recently(May 2008) been put on the IUCN Red list of birds, meaning there are concerns about its conservation worldwide.

7.6.3 The nightjar and the woodlark are also Annex I. The nightjar, as its name suggests, is nocturnal, hunts at night (6km range) and will almost certainly be disturbed by the lights of the site and car headlights on the Ively Road.

7.6.4 Peter Burley²⁸, reporting on the Draft South East Plan and the TBH SPA(Feb. 572007) wrote:

"... RSPB and Wildlife Trusts contend that the objectives of the European and the UK Legislation will not be met until all parts of the

²⁷ Fleet Mail 05.06.07

²⁸ Report to The Panel for the Draft South East Plan Exam. in public 19.02.07

SPA (TBH) are carrying the maximum density of birds that they can environmentally support”.

“... the populations of nightjar, woodlark and Dartford warbler still appear to be relatively unstable ...”

7.6.5 Indeed, NE in May 2007²⁹ welcomed the conclusions of Peter Burley and added: “The national populations of the three SPA species remain unstable and the increase in recent years is not in itself sufficient to conclude that further development would be unlikely to have a **significant** effect.”

7.6.6 “There is evidence that the populations of nightjar on TBH are affected by surrounding development and, in view of this, there is need for an avoidance and mitigation strategy”. What mitigation has been suggested?

7.6.7 The proposed depot will cause disturbance to the birds (also on The Fleet Pond SSSI) by way of light, noise, and fumes. Light will come from the new site, the new roundabout on the Ively Road and cars on the road and as they leave the vehicle exit at shift change (in winter times this will be twice a day with lights).

Noise will be 24 hours a day, everyday, as compared to normal quiet at present. Even the Airport does not operate at night. Locally, Brakes Brothers (a mini logistic depot in Southwood), has nighttime restrictions.

Fumes from the depot and all the new traffic will travel to The SPA and SSSIs.

7.8 The new roundabout on the Ively Road is closer to Eelmoor Marsh SSSI and the night time car lights and the street lighting will be seen at the SSSI.

7.6.8 The RSPB have objected to this application.

7.7 Trees

²⁹ NE's response to the Assessor's Report into TBH SPA 05.05.07.

- 7.7.1 There has not been an arboricultural assessment on the site of 120 acres with many trees.
- 7.7.2 A Tree Preservation Order exists on the entire application site.
- 7.7.3 The expected loss of trees is devastating because many trees act as "pollution dumps" by clearing pollution. They absorb CO2. Thus the developers are not only bringing added, new pollution but at the same time they see fit to remove possible mitigation of their pollution. They show a lack of concern for the community.

7.8 Air Quality

- 7.8.1 HGV and vehicle counts: It has proven very difficult to tie down the developer to a given number of vehicles and HGVs. The original figure was 600 daily HGV movements (but the maths failed to support that figure), then it went to 800 HGV movements per day, then a verbal 1,000 per day. More recently the developer has indicated a willingness to a capping agreement for traffic of 5,600 HGV movements per week (no daily limit), plus 8,000 vehicles per day – HGVs are defined as vehicles with 3 axles or more! Normally, HGVs are defined by weight and the developer's proposal allows many large 2-axle HGVs to pass as a "vehicle".
- 7.8.2 On around 20th October yet a new figure has arrived as a potential "cap" – 16,800 HGVs per week plus a similar figure for "vehicles".
- 7.8.3 It is not possible, under such circumstances, to accept any of the emission figures contained in the ES as they are all based on much smaller quantities.
- 7.8.4 The information supplied by the Developer, at least for ecology, was rather unclear. Estimates were done by desk-research so not modelled. Whilst doing the "calculations" were based on the DMRB recommended reductions which are now proving to be too optimistic and not being achieved. Thus their base-line is incorrect and skewed in their favour.

- 7.8.5 Where the readings on the sensitive sites appears unacceptably high (i.e. over 30 microgm/cubic metre) the Appellant claims dispensation by way of "The Limit Value" even though this is not acceptable to the statutory nature conservation agencies (as the developer acknowledges). This is hardly the Precautionary Principle at work.
- 7.8.6 In the lately submitted Addendum the developer states:
"The results of the HGV sensitivity study indicate that if the daily number of HGVs is increased beyond 800, the impact in terms of both Nitrogen deposition and NOx concentrations can be termed minor adverse, rather than negligible." If the number goes to 2400 per day the "minor" may become major. In any case with approximately 1200 pcus (cars) on the Minley Link road (where 1 HGV = 2pcus) they are already into adverse effects.
- 7.8.7 The air quality scenario for the ecology is not good with normal limits being exceeded or likely to be exceeded by the developer.
- 7.8.8 Further comments on Air Quality are in Appendix VII

8. APPROPRIATE ASSESSMENT

- 8.1 In 2006 SPLAT requested HDC to undertake an Appropriate Assessment(AA). Allowing for the Precautionary Principle, it appeared there was adequate doubt on the effects of the pollution on the protected bird species to warrant an AA. A senior Planning Officer at HDC(not the officer handling the application), claimed to be the competent authority and refused.
Requests to NE fell on deaf ears.
- 8.2 Prior to The Meeting of The Hart Planning Committee (March 19th) the Officer decided that, contrary to NE's advice, he would undertake a fairly swift AA. As the Officers had decided to recommend refusal of the applications, the officer felt it was not necessary to produce the AA at The Meeting. Furthermore, as it was not going to be produced The Officer decided not to consider "in combination".

- 8.3 Thus, a rather hurried AA was drafted, with no "in combination" evaluation and never included in the planning documents. This document has little or no relevance to these Applications and is not considered by SPLAT as it has never been a part of the applications
- 8.4 If there is doubt then the Precautionary Principle should apply. Unless it can be proven otherwise, a "significant" effect should be presumed.
- 8.5 Furthermore, the need to consider "in combination" plans and projects is required.
- 8.6 At present there are significant "in combination" plans and projects:
Farnborough Airport – most planes take off over the SPA. Pollution is already present. However, recent plans from TAG at the Airport show the likelihood of tripling the number of flights (from around 29,000 per year to 100,000). There will be greatly increased pollution on the SPA from more air traffic.
Kenmore Developers have exhibited plans to develop an area between the airfield and Pyestock. This site straddles the 400m Buffer Zone. The Traffic Flow has not been estimated yet but will constitute an increase. The new exhibition centre on the airfield will increase the road traffic. The estimated frequency of exhibitions is one every two weeks.
- 8.7 Hart DC have previously indicated that "in combination" would require a check with all the many councils involved with The TBH SPA.
- 8.8 All of these factors will lead to increased air and noise pollution in areas abutting the SPA and The SPA itself.
- 8.9 If it cannot be excluded that a proposal may have a significant effect an appropriate assessment must be made on a precautionary basis by the competent authority. In view of the "recovery" we presume The Secretary of State is the competent authority.
- 8.10 The competent authority must be "convinced" that there will be no adverse impact (and this is assumed to mean a significant adverse effect). If the appropriate assessment indicates that the proposal will, or may, have an adverse effect and conditions are inadequate to prevent it then it is advised to consider alternative solutions.

- 8.11 Taken individually the numerous areas of nature conservation may not seem significant but taken as a whole at the centre of a major SPA the negative impact could be devastating. The Waddensee ruling (C-127/02) demands that the integrity of the whole area must be considered including the SPA and the hinterland.

9. SPECIAL PROTECTION AREAS (SPA)

- 9.1 The Thames Basin Heaths Special Protection Area (TBH SPA) comprises 13 sites, in total some 8400 ha., affecting 15 Local Planning Authorities (LPAs) in Surrey, Berkshire and Hampshire. The Pyestock site is approximately in the middle of the scattered 13 units.
- 9.2 The Heaths are internationally important for woodlark, nightjar and Dartford warbler, Annex 1. They are nationally important for their mosaic of woodland and wet and dry heathlands. Some of the more extensive heathlands are also internationally important for their habitats.
- 9.3 Local Policy CON 1 states that development which would adversely affect the nature conservation value of SPAs will not be permitted unless there are no alternative solutions. There are alternative options!
- 9.4 **Eelmoor Marsh SSSI** (SU 841533) covers nearly 66 ha. The SSSI (part of the TBH SPA) is approximately 300metres from the nearest access to the development site. It is privately owned by QinetiQ and is fenced off from the public.
- 9.5 The exceptionally rich acid bog supports at least 250 species of flowering plants and grasses. The variety of habitat types present within the SSSI is reflected by a correspondingly diverse invertebrate fauna. Marsh fritillary and silver-studded blue butterflies reside on the SSSI.
- 9.6 There is a broad clearing from the Ively Road, where the new roundabout will be, to the edge of the SSSI, some 300metres. There is a walkway under the Ively Road to allow walkers to approach the fence

of the SSSI. Therefore there will be disturbance by noise and by light, 24 hours a day.

- 9.7 Air Quality may well be an issue from the site being only 300 metres away as well as "in combination" with departing jet planes "overhead". By the Precautionary Principle there is need for consideration.
- 9.8 **Bourley and Long Valley SSSI** (SU 835515) covers approx. 820ha. The SSSI (part of the TBH SPA) is just over 400 metres distant from the development proposal. 9.1.9 The habitat diversity supports rich flora and fauna including scarce plants and nationally rare insects.
- 9.10 The site also supports a small breeding population of hobby Falco subutteeo, important in a British context (Schedule 1).
- 9.11 Nationally important populations of the adder are also found.
- 9.12 This SSSI is directly under the take-off path of Farnborough Airport and is likely to suffer the new residential development of Queen Elizabeth Barracks (QEB) in due time. 9.1.13 The Fleet-Aldershot Road is one busy boundary which will certainly affect the parts of the SSSI nearest the roadway. It is a popular area for ramblers and dog-walkers.
- 9.14 Air pollution could be an issue at 500 metres but in combination with jet fuel exhausts it may be a real issue.
- 9.15 These two SSSIs are within the 1 km zone requiring a special assessment by NE and Eelmoor Marsh is within the 400 metre no-build zone. The expected additional traffic is expected to make the area less attractive to walkers and families but as the closer areas (SSSIs and SINCs) are also less attractive the strollers may end up at Bourley and Long Valley for peace and quiet.

10. SITES OF SPECIAL SCIENTIFIC INTEREST (SSSI BUT NOT IN TBH SPA):

- 10.1 SSSIs are important as they support plants and animals that find it more difficult to survive in the wider countryside. Protecting and

managing SSSIs is a shared responsibility, and an investment for the benefit of future generations.

- 10.2 ODPM Circular 06/2005³⁰ requires planning authorities “to take appropriate action to prevent damage by third parties” to SSSIs. They also need to take into full account their duty to take reasonable steps to further conservation and enhancement of the special interest features of SSSIs. There is little proof of any enhancement in these two plans. The Countryside and Rights of Way Act 2000 gives Natural England powers to ensure better protection and management of SSSIs and safeguard their existence into the future. The Government's Public Service Agreement target is for 95% of SSSI land to be in 'favourable' or 'recovering' condition by 2010.³¹
- 10.3 Hart DC Policy CON 2 protects SSSIs.
- 10.4 **Foxlease And Ancells Meadows – Unit 6** (SU831568) is alongside the Minley Link Road, the main route for the access to and exit from the development (800 HGVs per day). The range of habitats which comprise the SSSI form an ecosystem of great diversity.
- 10.5 The new Noise Barrier will be erected within 25metres of the SSSI. Permission to create such disturbance would normally require clearance from NE or HDC but no such request or clearance has been observed.
- 10.6 The Air Quality is likely to be at maximum permitted levels or over. As the SSSI is not widely used by humans the main impact by pollution through noise, air and light will be on the wildlife and flora.
- 10.7 The condition of Unit 6 is assessed as 80.51% of the area being unfavourable but recovering(which meets the PSA target) and 14.17% unfavourable and declining.
- 10.8 **Fleet Pond SSSI** (SU822551) is the largest freshwater expanse in Hampshire. It does not form part of the TBH SPA.
- 10.9 The history of Fleet Pond goes back to 1324 or earlier.

³⁰ ODPM.Circ.06/2005 para 61(b) P.21 16.08.05

³¹ Natural England Sites of Special Scientific Interest, Protecting SSSIs

- 10.10 Fleet Pond supports a rich aquatic flora, including a number of locally distributed or rare species. The site supports substantial breeding populations of reed warblers and some other wetland birds. It is an autumn and winter wildfowl resort for substantial numbers of both surface feeding and diving ducks.
- 10.11 Extensive shallow lakes of this kind are rare in south-central England and this example possesses a diverse flora and fauna. Much of the land around Fleet Pond is designated as a Local Nature Reserve (135 acres). The surrounding land features many rare habitats including heathland, woodland, reedbed and marsh³².
- 10.12 According to the Appellant, Fleet Pond is a mere 90 metres from the development site³³. At 90 metres the Pond will feel the effects of emission, noise and light pollution from Pyestock when it is being built and when it is operational with hundreds of HGVs and thousands of other vehicles.
- 10.13 Sadly, Fleet Pond is declining (94%) and continues to decline³⁴ and yet improvements must be shown by 2010 to meet Government policy on SSSIs. Only 6% meets the PSA Target. The pollution from Pyestock will certainly add to the deterioration.
- 10.14 A Letter of Objection from The Chairman of Fleet Pond Society³⁵, a well-respected and renowned consultant, in May 2007 spells out the evident dangers to Fleet Pond ecology. He stresses the loss of tranquility as a major loss for visitors seeking a quiet place to walk. The Pond already suffers noise from the M3 and the railway line, from local traffic and gardens. The Pond would be surrounded with noise if Pyestock were to become a reality. There would be a significant loss of tranquility if a megadepot is built within 90metres of the The Pond and this would represent the loss of amenity to the hundreds of residents that walk around The Pond.

³² NE's notes on Fleet Pond

³³ 00764 ES Tech Vol.2, Bat surveys para 4.6

³⁴ Restoration of Fleet Pond, August 2008, HDC

³⁵ Fleet Pond Society letter to HDC 26.05.07

- 10.15 The Planning Inspector ruled against Housing (surely less noisy than a 24 x 7 megadepot?) at Halesowen, Birmingham, on the grounds of loss of tranquillity.³⁶ As the attraction of The Fleet Pond diminishes, so more visitors and residents will be pushed to the SPA thereby increasing disturbance to wildlife in the SPA.
- 10.16 The paucity of information in the Ecology Report is emphasized when looking at the documented variety of wildlife at The Pond³⁷ – 180 kinds of birds, 26 types of butterfly, 21 species of dragonfly and 400 wild flowers, many of which are nationally or internationally important. The Fleet Pond Society organizes guided walks (1.5 hours) around The Pond to see snakes, slow worms and bats and yet consultant ecologists on the Pyestock site (some 90 metres away) found very few of these species and in very low numbers.
- 10.17 Fleet Pond SSSI is protected by national, county and local policies in its own right. The fact that two units of the Thames Basin Heaths SPA are close by merely serves to strengthen the need to protect all of these areas. The SSSI should not be overlooked as a consequence of the TBH SPA.

11. SITES OF IMPORTANCE FOR NATURE CONSERVATION (SINCS):

- 11.1 SINCs are designated in order to protect the most important areas for wildlife and geology outside of the statutory sites schedule. SINCs have been jointly agreed with Hants. CC, Natural England, Hart DC and the Hants & Isle of Wight Wildlife Trust.
- 11.2 Hart DC Policy CON 3 states that development which would adversely affect the nature conservation interest of SINCs will only be permitted if other material considerations outweigh the importance of the site to local nature conservation. This development involves eight SINCs, four

³⁶ Halesowen decision – Fieldwork, June 2007 p.3

³⁷ Hart DC: 2008 Guide to Countryside Walks in Hart District brochure

of which are on or linked to the development site and which will be damaged if not completely lost.

- 11.3 The Guidance for Local Authorities on Implementing the Biodiversity Duty (DEFRA May 2007) outlines examples of the potential effects of development on Biodiversity (Fig 4.1 page 39). Negative effects of development include:

Direct loss of land including **biodiversity rich brownfield sites**

Fragmentation of habitats

Death or injury resulting from population pressures, e.g. disturbance through increased access, fire setting etc

Disturbance and pollution from increased transportation

Noise, air, light and water pollution from construction and operation of buildings and machinery.

I believe that all these effects apply to the Pyestock proposals, demonstrating still further the negative attributes of the proposals on ecological resources.

- 11.4 (Map F1)³⁸ taken from the ES of The Appellant shows the nearest SINCS to the site. It names six of them but omits the names of two others which are important.

Bramshot Common (SU 8340 5530) shares a small area with the site and forms a boundary with the entrance/exit road so is very likely to suffer from the pollution and disturbance on site, both during construction and operation.

Pyestock North Grasslands (SU 8343 5457) is fully on the site and will be lost by the development.

Pyestock Fairway (SU 8338 5413) is also on site and will be lost.

Southwood Kennels Lane (SU 8390 5480) is also on site and may be lost depending on which development is finally selected by the Developer.

³⁸ Map F1 See App. 5

Pyestock Hill/Pondtail Heath (SU 8300 5400) borders the site and is therefore certain to feel the effects of the development during construction and operation.

Pyestock Playing Fields (SU 8360 5400) borders the southern point of the site.

Fleet Pond Woods (East) (SU 8270 5530) is within 100metres of the site and next to Fleet Pond SSSI.

Southwood Complex (SU 8430 5490) is less than 50metres from the site.

Species supported on the SINC's which meet the Section 6 Selection Criteria include Lily-of-the-Valley, Bladder-sedge, Bog myrtle, Chamomile, Dwarf chickweed, Pale Chickweed, Fenugreek, White Sedge.

- 11.5 People use Bramshot Road as a parking area for walking dogs in that area. The Appellant plans to stop public use of the road. This road will become the main access and exit for 800 HGVs per day. The pollution will be directly on to the SINC.
- 11.6 The Pyestock Hill/Pondtail Heath is a very popular walking area for families and their pets. The development will almost certainly turn people away and on to the SPA at Bourley and Long Valley, just across the road from Pondtail Heath.
- 11.7 The lighting at night will probably be visible through the diminished tree population as there is very little light on the site at the present. Air Quality on bordering SINC's will be reduced and take its toll on the trees and vegetation.
- 11.8 **Conclusion:** It is disappointing to see the loss of part or all of 4 SINC's on the site. What is the point in time and expenditure on an item, such as a SINC, which is summarily dismissed when a planning application is presented?
- 11.9 Hants CC and Natural England have accepted translocation of grasslands as the only solution for SINC's on site. Both organisations state they do not like it and there is no evidence to show that it works.

The clear conclusion is the loss of the grasslands as well as the SINCS which are nominated for other species as well. The likely damage to surrounding SINCS by pollution is also apparent.

12. HAMPSHIRE COUNTY COUNCIL

- 12.1 The Hants CC Biodiversity were helpful with maps and some definitions but the overall communication and willingness to be open on meetings and developments was disappointing.
- 12.2 Please see Appendix VIII

13. ENGLISH NATURE/NATURAL ENGLAND

- 13.1 Cooperation with NE was very one way. Indeed over 2.5 years we were not allowed one meeting with NE. This proved very embarrassing when Brussels was urging SPLAT to meet with NE.
- 13.2 There was little openness or transparency and one cannot believe that Aarhus has come to The UK yet.
- 13.3 See Appendix IX

14. CLIMATE CHANGE

- 14.1 Climate Control has not been enthusiastically considered in these applications. With respect to Climate Control for ecology the development will be a disaster.
- 14.2 See Appendix X