Communities and Local Government

Department for Transport

Mr Christopher Proudley
Trowers & Hamlins
Sceptre Court
40 Tower Hill
London EC3N 4DX

Our Ref: APP/P1750/A/09/2118357
Your ref: SDF.49613.16.CXP

10 February 2011

Dear Sir,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 73
APPEAL BY TAG FARNBOROUGH AIRPORT LTD
FARNBOROUGH AIRPORT, FARNBOROUGH ROAD, FARNBOROUGH, HAMPSHIRE, GU14 6XA

1. We are directed by the Secretaries of State for Communities and Local Government and for Transport ("the Secretaries of State") to say that consideration has been given to the report of the Inspector, David Richards BSocSci DipTP who held a public local Inquiry between 26 May 2010 and 30 June 2010 into your client's appeal against the refusal of Rushmoor Borough Council ("the Council") to grant planning permission, under section 73 of the Town and Country Planning Act 1990, for the development of land without complying with conditions subject to which a previous planning permission was granted, at Farnborough Airport (application Ref 09/00313/REVPP, dated 8 June 2009). The application proposed a variation to condition 8 of the earlier permission to read:-

> *"No more than a total of 50,000 aircraft movements per annum shall take place, of which no more that 8,900 movements shall be at weekends and Bank Holidays. Furthermore no more than 270 aircraft of the 1,500 movements per annum between 50,000 and 80,000 Kg, permitted by condition 12, shall take off or land at weekends and Bank Holidays"*

2. On 22 December 2009 the Secretaries of State directed, under section 266(1A) of the Town and Country Planning Act 1990, that section 266(1) should have effect in relation to this appeal by a statutory undertaker to develop either operational land or land which would become operational if planning permission were to be granted; and that it was therefore to be determined jointly by them.

Inspector's recommendation and summary of the decision

3. The Inspector, whose report is enclosed with this letter, recommended that the appeal be allowed and planning permission granted. For the reasons given below, the Secretaries of State agree with the Inspector's conclusions and with his

Department for Communities and Local Government
Zone 1/H1
Eland House
Bressenden Place
London SW1E 5DU
Tel 0303 444 1626
Email: PCC@communities.gsi.gov.uk

Department for Transport
Zone 1/24
Great Minster House
76 Marsham Street
London SW1P 4DR
Tel 020 7944 3920
Email: www.dft.gov.uk

recommendation. All paragraph references, unless otherwise stated, refer to the Inspector's report (IR).

Procedural matters

4. An application was made by your client for an award of costs against the Council. The Secretary of State for Communities and Local Government's decision on this application is the subject of a separate letter.

5. In reaching their decision on this appeal, the Secretaries of State have taken into account the Environmental Statement (ES) submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (S.I. 1999/293). Like the Inspector (IR3), they are satisfied that the ES meets the requirements of the 1999 Regulations and that sufficient information has been provided for them to assess the environmental impact of the appeal.

Representations received after the close of the Inquiry

6. Following the close of the Inquiry, the Secretaries of State received one written representation, from Michael Gove MP, which they have carefully considered. However, they do not consider that this correspondence raises any new issues which would affect their decision or require them to refer back to parties prior to reaching their decision. Copies of this correspondence are not attached to this letter but may be obtained on written request to the above address.

Policy Considerations

7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan comprises the Rushmoor Local Plan Review (RLPR) adopted in August 2000. The Secretaries of State consider that the development plan policies most relevant to the appeal are those set out in IR37-39.

8. The Secretaries of State have taken into account, following the close of the Inquiry, the decision of the Court on 10 November in "The Queen on the application of Cala Homes (south) Limited v Secretary of State for Communities and Local Government" (CO/8474/2010), which has resulted in the Regional Spatial Strategy (RSS) being re-instated, and therefore material to this case. The Secretary of State for Communities and Local Government has since made it clear that it is the Government's intention to revoke RSSs, and the provisions of the Localism Bill which is now before Parliament reflects this intention. Whilst the Secretaries of State have taken this matter into account in determining this case, they give it little weight at this stage of the parliamentary process. The Secretaries of State do not consider that it is necessary to refer back to parties on the implications of this change before reaching their decision. This is because they consider that the key policies upon which this case rests are set out in the RLPR and national policies, rather than the RSS. They also note that when asked to comment on the implications of the revocation of the RSS, the principal parties both agreed that revocation would not significantly affect the balance of the arguments in respect of their cases, and that no other comment on the issue of revocation was expressed by the Rule 6 party or any other interested person or group (IR624). Notwithstanding that these comments

relate to the revocation of the RSS, the Secretaries of State take it that, in these circumstances, if the balance of arguments is unaffected one way, then it must equally apply in the other direction.

9. Other material considerations include the Air Transport White Paper; the Coalition Programme of Government (published in May 2010); the ministerial statement by the Secretary of State for Transport on 15 June 2010, regarding the establishment of the South East Airports Taskforce; PPS 1: *Delivering Sustainable Development* (2005) and the *Climate Change Supplement* (2007); PPS 4: *Planning for Sustainable Economic Growth* (2009); PPG 13: *Transport* (2001); PPS 23: *Planning and Pollution Control* (2004); PPG 24: *Planning and Noise* (1994); Circular 11/95: *Use of Conditions in Planning Permission;* and Circular 05/05: *Planning Obligations,* together with the *Community Infrastructure Levy Regulations 2010* (S.I. 2010/948) (CIL Regulations) which came into force on 6 April 2010.

10. The Council's emerging Core Strategy and the Farnborough Airport Area Action Plan (both published in January 2010 for consultation) are material considerations but, given that they are at a very early stage in their progress towards adoption, the Secretaries of State afford them minimal weight.

Main Issues

11. The Secretaries of State agree with the Inspector's assessment and conclusions on the main issues as set out in IR434-437.

Noise

12. The Secretaries of State have carefully considered the Inspector's reasoning on noise as set out at IR438-504 and IR628-643 and has noted his conclusions. They agree with the Inspector (IR629) that the current proposal for an increase in overall and weekend movements in excess of the figure of 28,000 movements would conflict with the movement limits set out in the second part of RLPR policy FA2.2(A)(i) and, in that respect, would represent a departure from the development plan. They also agree with the Inspector (IR632) that it is material to consider the other leg of policy FA2.2(A)(i), which provides that the number of aircraft movements shall not exceed those that would be generated by 20,000 movements per annum of aircraft similar to the mix of civil aircraft movements to and from Farnborough Aerodrome in 1997; and they note that it is common ground between the main parties to this appeal proposal (IR633) that it would not exceed that noise budget.

13. At the same time, however, the Secretaries of State agree with the Inspector (IR634) that the appeal proposal would conflict with the requirement in RLPR policy FA2.2(C) in that the degree of harm would pass the threshold of demonstrable harm. They agree with him that this is a stern test and that it is for them, as decision makers, to assess the degree of harm on the evidence presented. The Secretaries of State have therefore gone on carefully to consider the matters explored by the Inspector at IR636-642, along with his earlier arguments cross-referred to in those paragraphs; and they agree with his conclusion at IR643 that, while the evidence presented on the basis of the conventional means of assessment, supplemented by subjective assessment, indicates that the noise effects of the proposal would be moderate, the effects would nevertheless amount to demonstrable harm and are a

factor to be weighed in the balance with the other considerations which they now go on to consider.

Safety

14. For the reasons given at IR644-648, the Secretaries of State agree with the Inspector's conclusions at IR649 that there would be some increase in third party risk; but that considerable weight should be attached to the conclusion of the Council's consultants (ESR Technology – IR648) that such risks, though significant, are not exceptional when compared with risks encountered at other airports. Like the Inspector, the Secretaries of State consider that such risks are to some degree inherent in being part of a developed society, and must be balanced against other considerations (IR649).

Air quality and odour

15. The Secretaries of State agree with the Inspector (IR650) that, for the reasons which he gives at IR542-550, there is no evidence that adverse health effects are likely to result from the proposal. They agree with the Inspector that, while there would be some conflict with RLPR policies FA.2.2(C) and ENV48 as those policies are drafted in terms of "no adverse effect", any adverse effect is unlikely to be material. Having regard to the provisions in the S106 Agreement referred to by the Inspector at IR650, the Secretaries of State agree with him that the conflict with the development plan with regard to air quality and odour should carry very little weight in the overall balance.

Climate change

16. The Secretaries of State agree with the Inspector (IR651) that, for the reasons given at IR604-614, emissions of carbon attributable to aircraft in flight are more properly dealt with through the forthcoming EU Emission Trading Scheme, which will apply to aviation from January 2012, and which is intended to cap carbon emissions to a fixed limit by requiring airlines operating within the EU to surrender allowances to cover annual carbon emissions. With regard to emissions resulting from airport operations, the Secretaries of State agree with the Inspector (IR651) that the proposals which the airport operator is offering in the S106 Agreement and section 12 of the Master Plan demonstrate commitment to adopting and progressing measures in advance of regulatory requirements. They therefore agree with the Inspector's conclusion that climate change issues arising from the proposal have been satisfactorily addressed and so do not stand in the way of permission being granted.

Economic benefits, need and alternatives

17. For the reasons given at IR551-568, the Secretaries of State of State agree with the Inspector's conclusion at IR652 that the existing operation at Farnborough Airport makes a significant contribution to the economic well-being of Rushmoor Borough and the surrounding area; and that the appeal proposal will result in a significant increase in direct, indirect and induced employment. They therefore also agree with the Inspector (IR653) that this will bring clear benefit to the local economy, to which significant weight should be attached.

18. With regard to need and alternatives, the Secretaries of State agree with the Inspector's conclusions at IR 595-596 that, for the reasons given at IR572-594, Farnborough Airport is well placed to serve the business aviation sector (with its important contribution to economic prosperity and national and local income), with high quality airfield and terminal facilities. They therefore also agree with the Inspector's wider conclusions at IR602-603 that the existence of Farnborough Airport provides a significant asset to the locality and the sub-region; and that the appeal proposal would support the intentions of the RPPR to promote and encourage a buoyant and diverse local economy.

Other matters

19. For the reasons given at IR615, the Secretaries of State agree with the Inspector that, taking account of the mitigation provided through the travel plan and off-site contributions secured through the S106 agreement, the impact of the proposal on the local road network would be negligible. They also agree with the Inspector's conclusion at IR619 that, for the reasons given at IR616-618, there would be no reason to refuse planning permission on grounds of harm to biodiversity. Furthermore, the Secretaries of State agree with the Inspector's conclusion at IR620 that, in arriving at the overall balance, little weight should be given to the prospect of property prices being affected adversely by proximity to the airport approach and departure routes.

Human Rights

20. For the reasons given at IR621-622, the Secretaries of State agree with the Inspector that the degree of infringement of human rights which the appeal proposal might potentially generate would not be disproportionate and would be capable of being outweighed by the resulting economic and employment benefits.

Conditions and Obligation

21. The Secretaries of State have had regard to the recommended conditions as set out in the Annex to the IR, the Inspector's assessment of these at IR425–432, and the policy tests in Circular 11/95. The Secretaries of State consider that these conditions, as set out in the Annex to this letter and including the variation to condition 8 of the condition attached to planning permission Ref: APP/P1750/A/06/2024640 which now forms condition 7 in the attached Annex, are reasonable and necessary and comply with the provisions of Circular 11/95.

22. In considering the signed and executed replacement Section 106 Agreement dated 29 June 2010, the Secretaries of State have had regard to the policy tests in Annex B of Circular 5/2005 *Planning Obligations* and the terms of Regulation 122 of the CIL Regulations and have also taken account of the Inspector's comments at IR433. They conclude that the terms of the Agreement are fairly and proportionately related to the development proposed and accord with the tests in Circular 05/2005 and the CIL Regulations.

Conclusion

23. Although the Secretaries of State conclude that the appeal proposal would conflict with the development plan by leading to a moderate degree of harm in respect of increased noise, they consider that, by providing significant employment

benefits, it would also firmly support the aims of the development plan to promote and encourage a buoyant and diverse local economy. The Secretaries of State see this as an important material consideration and consider that it outweighs the moderate harm identified in respect of noise. Furthermore, while the Secretaries of State accept that there would be some increase in third party risk arising from the increased activity, they do not consider that such risk would be exceptional; and they also consider that the climate change issues arising from the proposal will be satisfactorily addressed through the EU ETS in due course. Overall, therefore, the Secretaries of State consider that, to the extent that the proposals are in conflict with the development plan, this is outweighed by material considerations in favour of the proposal.

Formal decision

24. Accordingly, for the reasons given above, the Secretaries of State agree with the Inspector's recommendation. They hereby allow your client's appeal and grant planning permission for the erection of new buildings and associated structures, installation of aerodrome and ancillary infrastructure works, formation of new vehicular access, and use of the aerodrome for business aviation and related activities in accordance with the application Ref 09/00313/REVPP, dated 8 June 2009, without compliance with Condition 8 attached to planning permission Ref APP/P1750/A/06/2024640, dated 13 March 2008, but subject to new and amended conditions as set out in the Annex to this decision letter.

25. An applicant has a statutory right of appeal to the Secretaries of State if consent, agreement or approval required by a condition of this permission is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

26. This letter does not convey any approval or consent which may be required under any enactment, by-law or regulation other than that required under section 57 of the Town and Country Planning Act 1990.

27. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

28. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

29. A copy of this letter has been sent to the Council and to those who appeared at the inquiry.

Yours sincerely

Jean Nowak

Yours sincerely

John Parkinson

Authorised by the Secretary
of State for CLG to sign in that behalf

Authorised by the Secretary
of State for Transport to sign
in that behalf

Annex A

Conditions

1. Application for the approval of any reserved matters shall be made to the Local Planning Authority before the expiration of 5 years from the date of the grant of this permission.

2. The development hereby permitted shall be carried out in accordance with the details submitted with application number 99/00658/OUT (approved 11th October 2000) including the amended site plan received on 7th December 1999.

3. No works pursuant to this permission shall commence, until plans and particulars showing the detailed proposals for all the following aspects of the development (hereinafter called the "reserved matters") have been submitted to and approved by the Local Planning Authority in writing:

    - landscaping, including a landscaping design showing the planting proposed to be undertaken, the means of forming enclosures, the materials to be used for paved and hard surfaces and the finished levels in relation to existing levels;
    - the siting of all buildings;
    - the design and external appearance of all buildings, plant and tanks, including details of the colour and texture of external materials to be used, together with samples of all external facing and roofing materials;
    - the layout of foul sewers and surface water drains including interceptors;
    - the provision to be made for the parking, turning, loading and unloading of vehicles;
    - the measures to be taken to protect adjacent areas from excessive noise;
    - the alignment, height and materials of all walls, bunds, fences and other means of enclosure;
    - the provision to be made for lighting;
    - the provision to be made for the storage and removal of refuse from the premises; and
    - all other engineering works.

    Each of the agreed reserved matters shall be implemented in accordance with the details approved.

4. The development shall be based on and set out in accordance with the illustrative Master Plan, Drawing No. TOR158901.SK 59 Rev A submitted in support of application number 99/00658/OUT.

5. Notwithstanding the provisions of Condition 4 all new aviation building and facilities shall be located generally within the identified Development Area as shown on Drawing No. TOR158901/SK/70.

6. The development shall have a maximum gross floor space on completion of 47,018sq.m. (including the floorspace granted planning permission under the terms of outline permission reference 99/00658/OUT) and this shall comprise in the region of: Hangar space (inclusive of new and existing hangars) 37,162sq.m; Hangar Office/Administration 3,050sq.m; Control Tower 806sq.m; Terminal Building 6,000sq.m. No new building shall be erected outside of the Development Area as shown on Drawing TOR158901/SK/70.

7. No more than a total of 50,000 aircraft movements per annum shall take place, of which no more than 8,900 movements shall be at weekends and Bank Holidays. Furthermore, no more than 270 of the 1,500 aircraft movements per annum between 50,000 and

80,000 Kg, permitted by condition 11, shall take off or land at weekends and Bank Holidays.

8. All flying pursuant to this permission shall only take place between 07.00-22.00 hours on weekdays and between 08.00-20.00 hours on Saturdays, Sunday and Bank Holidays, except in an emergency. No flying pursuant to this permission shall take place on Christmas Day and Boxing Day.

9. The maintenance of business aviation aircraft shall only take place between 07.00-22.00 hours on weekdays, and between 08.00-20.00 hours on Saturday, Sundays and Bank Holidays, except in an emergency. No maintenance shall take place on Christmas Day and Boxing Day.

10. No bulk freight service, scheduled passenger services, “including tour” charter flying shall take place. No training or recreational flying (other than recreational flying by the DERA Aero Club or essential familiarisation, training and flying checks by aviation crew) shall take place.

11. With the exception of up to 1,500 movements per annum by aircraft not exceeding 80,000 Kg maximum take off weight, no aircraft exceeding 50,000 Kg maximum take-off weight and no helicopters exceeding 10,000 Kg maximum take off weight shall take-off or land at the Aerodrome pursuant to this permission.

12. No flying pursuant to this permission shall take place if the 1:10,000 per annum risk contour at either end of runway 06/24 extends to areas where people live, work or congregate, or beyond the area at the eastern end of the runway where Policy FA1 of the Rushmoor Local Plan (1996-2011) Review applies.

13. All flying pursuant to this permission shall conform to the agreed 1:100,000 per annum risk contour. For the avoidance of doubt, the currently approved plans are: GN TG A OP 1582 rev A; GN TG A OP 1583 rev A; and GN TG A OP 1588 rev A.

14. The proposed runway configuration submitted to and approved in writing by the Local Planning Authority shall be retained thereafter.

15. For any reserved matter no development shall take place until a construction method statement to include the following: Construction activity and traffic, including dust, noise, hours of operation and traffic movements; The monitoring of potential areas of contamination; Protection of water course; and Protection of habitats during construction activity has been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.

16. For any reserved matter, site preparation, clearance works, construction works and pile driving within the area covered by the application site shall only take place between the hours of 0730 and 1800 Monday to Friday and 0800 1300 on Saturdays. No works at all shall take place on Sundays or Bank Holidays.

17. For any reserved matter no development shall take place until details of measures to be taken to prevent mud from vehicles leaving the site during the construction works being deposited on the public highway have been submitted to and approved in writing by the Local Planning Authority and the details subsequently approved shall be implemented before the development commences. Such measures shall be retained for the duration of the construction period. No lorry shall leave the site unless its wheels have been cleaned sufficiently to prevent mud being carried onto the highway.

18. For any reserved matter no development shall take place until details of the provision to be made for the parking and turning on site of operatives and construction vehicles during the contract period have been submitted to and approved in writing by the Local

Planning Authority. Such measures shall be retained for the duration of the construction period.

19. For any reserved matter, no development shall take place until surface water control measures have first been agreed in writing by the Local Planning Authority.

20. For any reserved matter, no development shall take place until it has been satisfactorily demonstrated that adequate infrastructure is in place to receive foul water discharges from the site. No building shall be occupied until the infrastructure is available in accordance with the approved details.

21. The access from the A327 at Ively Gate shall remain available in accordance with details which have been approved in writing by the Local Planning Authority. All other access to the site, other than the emergency crash gates and the existing site entrance from the A325 Farnborough Road as shown on the illustrative Master Plan, Drawing No. TOR158901.SK 59 Rev A, shall remain closed.

22. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, (or any order revoking and re-enacting that Order), no development falling within Classes A-D, of Part 8 and Class A, of Part 18 of Schedule 2 shall be carried out.

23. A detailed scheme of measures to mitigate the impact of the additional business aviation movements on the Farnborough Airport Site of Importance for Nature Conservation, including a timetable for the carrying out of the works, shall be submitted to the Local Planning Authority for approval in writing within 6 months of the date of this permission. The scheme of mitigation shall be carried out strictly in accordance with the details and timescale so approved.

24. No business aviation movements above 28,000 per annum shall take place until a scheme detailing the provision to be made on site for cycle parking facilities, including specification and siting, shall be submitted to and approved in writing by the Local Planning Authority. The agree details shall be fully implemented before business aviation movements exceed 28,000 per annum and the cycle parking facilities thereafter retained for their intended purpose.

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.