

Lydd Airport – Possible Brexit repercussions/uncertainties

One of the unfortunate consequences of the Brexit vote is that the UK is likely to lose the environmental protection provided by the Habitats Regulations. This has resulted in large areas of land being designated in the UK for conservation and rigorously protected in law - including sizeable chunks of Dungeness.

The legislation is immensely practical, effective and fair - it does not stop development but ensures all other alternatives are pursued before development is approved in the public interest. It thus helps to stop political decisions – although this was not the case with Lydd Airport.

The legislation's strength is demonstrated in its application to Dungeness. This area was ruled out as a site for a new nuclear power station over the next few decades because building a new power station would directly result in the loss of a considerable amount of the important land features within a European designated site (in this case a Special Area of Conservation (SAC)). By contrast, Lydd Airport's proposed extended runway will only take a tiny and unimportant (according to Lydd Airport) slice of the same designation. (Many NGOs including LAAG argued that the airport's development would damage the surrounding protected habitats through the impact of pollution and/or by disturbance/killing of birds which are features of one of the designations. The government sided with the Lydd Airport's evidence on these matters, rather than that of environmental experts, and the development was approved)

What replaces this legislation is unknown, but there is a strong possibility, given the development proclivities of the UK, that the European influenced legislation will be replaced by weaker, historic UK legislation which covers national designations such as Sites of Special Scientific Interest (SSSI).

The situation is complicated as many areas have multiple designations. This certainly applies at Dungeness – where large areas designated as a SSSI are also designated as a Special Protection Areas (SPA) and Special Areas of Conservation (SAC). If just historic SSSI legislation ends up covering these areas the protection will be weakened. At least at Dungeness there is a back stop, in that a good deal of the area covered by European legislation is also part of the RSBP nature reserve.

Lydd Airport and Dungeness C

Weakening the legislation is almost certainly going to lead to an earlier Dungeness C. The building of a new power station was always possible under the Habitats Regulations, but all alternative solutions needed to be pursued first before construction was possible (i.e. all alternative nuclear sites built out and evidence provided that additional greenfield deep water locations in sparsely populated areas are no longer available). With weaker environmental legislation the government will have the flexibility to bring forward the Dungeness C option.

This will in turn result in a conundrum for the government. Nuclear safety is guided by the Euratom Treaty which is a separate body of legislation, running in parallel with that for the EEC. It is possible that the UK leave the EEC but opt to remain in the Euratom Treaty, given the intolerable and far reaching consequences of a nuclear accident. If this is the case, the Commission will retain its right to make a judgement about the safety of a new power station in the UK, and thus at Dungeness.

On past evidence it is highly likely that the UK nuclear regulator will continue to assert that Lydd Airport and a new nuclear power station can safely co-exist (Dungeness C will be closer to Lydd Airport). But the European Commission could have an alternative view given the body of evidence in the market (which includes the Commission) that the nuclear regulator's regulatory judgement on Lydd Airport's development was deeply flawed. All the evidence indicates that Lydd Airport's proposed development will lead to an unacceptably high probability of an aircraft accident at Dungeness leading to a serious nuclear accident. Both the public and the environment will be at risk.

The Commission could not stop Dungeness C's development, but by exercising its right to make its internal safety assessment public, it could set in train an unstoppable political process – leading to the government of the day having to make a choice between the airport or a new power station - plus possible legal challenges from Lydd Airport should the power station win out.

Should the UK government choose to extract the country from the Euratom Treaty, it will most likely be forced to compromise in its leaving negotiations, given the UK's physical proximity to Europe and the wide geographical consequences of a nuclear accident. Doubtless, Europe will continue to want to voice and publish its opinion about the safety of a new power station in the UK, particularly one close to its boundaries.

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