

**Vary the obligation of the Section 106 Agreement at Rendcomb Airfield
Rendcomb Cirencester Gloucestershire GL7 7DF**

Discharge/modification planning obligation 23/03211/DMPO	
Applicant:	Rendcomb Aerodrome Ltd
Agent:	LPC (Trull) Ltd
Case Officer:	Harrison Bowley
Ward Member(s):	Councillor Paul Hodgkinson
Committee Date:	10th July 2024
RECOMMENDATION:	THE PLANNING OBLIGATION SHALL CONTINUE TO HAVE EFFECT WITHOUT MODIFICATION

1. Main Issues:

- (a) Are there reasonable grounds to discharge or modify the S106 legal agreement?

2. Reasons for Referral:

It is considered appropriate for this application to be determined by the Planning and Licensing Committee in this instance, due to the complexity of issues relating to noise and landscape impacts.

3. Site Description:

3.1 The application site consists of Rendcomb Airfield, an airfield and associated modern hangars located to the east of the Whiteway, around 1km east of the village of Rendcomb. The site contains a number of modern hangars to the north and centrally within the site. The site is abutted to the north, east and south by open agricultural fields, with some sporadic residential development within close proximity. A Public Right of Way lies to the south.

3.2 The site lies within the Cotswolds National Landscape.

4. Relevant Planning History:

4.1 CT.6725 - Full planning permission for change of use from agricultural land to grass airfield on land opposite Rendcomb buildings, known as Rendcomb aerodrome - Permitted 20/06/1989;

4.2 CT.6725/A - full planning permission for erection of hangars at land opposite Rendcomb buildings, North Cerney - Permitted 11/12/1990;

4.3 CT.6725/B - full planning permission for alterations and extensions to the existing building to form a storage and maintenance building to be used in connection with Rendcomb airfield - Permitted 24/11/2000;

4.4 21/00911/DMPO - Vary the obligation of the Section 106 Agreement - Withdrawn 03/08/2023

5. Planning Policies:

- TNPPF The National Planning Policy Framework
- EN1 Built, Natural & Historic Environment
- EN2 Design of Built & Natural Environment
- EN4 The Wider Natural & Historic Landscape
- EN5 Cotswolds AONB
- EN7 Trees, Hedgerows & Woodlands
- EN8 Bio & Geo: Features Habitats & Species
- EN9 Bio & Geo: Designated Sites
- EN15 Pollution & Contaminated Land

6. Observations of Consultees:

6.1 CDC Landscape Officer - No comments;

6.2 CDC Biodiversity and Countryside Officer - No objection;

6.3 GCC Highways - No objection;

6.4 Southdowns Environmental Consultants - *"It is therefore advised that Cotswold District Council should refuse the application to vary the obligations in the Section 106 agreement on the grounds of its noise impact."*

7. View of Town/Parish Council:

7.1 The site lies within the Parish of Rendcomb. Rendcomb Parish Council's most recent comments are as follows:

7.1.1 *"This is the response of Rendcomb Parish Council (RPC), as a consultee, to the latest proposal (letter dated 19th February 2024) by Rendcomb Aerodrome Ltd (RAL) to remove the current S106 restrictions on commercial flying at Rendcomb airfield so that AeroSuperBatics (ASB), based at the airfield, can continue to offer wing-walking flights to the general public. By making the application RAL is acknowledging that it has breached Obligation 11 of the agreement but attempts to explain that it is only a technical issue. This is disingenuous - the breach is real and has been occurring since ASB started commercial wing-walking operations for the public at Rendcomb in 2018.*

7.1.2 *A recurring theme of the document appears to be the benefit to various charities resulting from the wing-walking endeavours of ASBs customers (who pay handsomely for the experience as can be seen from ASBs website - ASB is not itself a charity). RPC understands that charitable activities are not planning considerations although the applicant attempts to suggest that they should be considered. Also, there are claims that the wing-walking activity at the airfield makes an important contribution*

to the local, rural economy. RPC would certainly like to see some firm evidence of this assertion as otherwise it is nothing more than conjecture.

- 7.1.3 *It appears that the new application stems from a meeting with Chedworth Parish Council where certain potential concessions and restrictions on operations at Rendcomb airfield were discussed. This is all very interesting but RPC would like to point out that Rendcomb airfield sits within the area of responsibility of Rendcomb Parish Council, not Chedworth, and that an approach to RPC has never been made. It is understood that ASB has agreed not to overfly Chedworth village or Chedworth Laines (although no mention is made of this in the proposal so it would be unenforceable). Presumably this flying will now take place over someone else. Furthermore, at one point the letter suggests that it would be perfectly legal, if ASB was based elsewhere, for the aircraft to return to Rendcomb airfield with a wing-walker and then carry out a display over surrounding residential properties, provided the aircraft is no lower than 200 feet above ground level claiming this would not be in breach of the Civil Aviation Authority Regulations. This is misleading. It certainly would breach the UK Air Navigation Order with regards to separation, and render the pilot liable to prosecution.*
- 7.1.4 *Unfortunately, the letter still pursues the line that wing-walking flights have taken place at Rendcomb for the past 30 years or so but again fails to address the fact that since around 2018 there has been a fundamental variation in the nature of these flights as a result of a change of business model. This has led to the high level of dissatisfaction with the current situation and the substantial local objection to RALs initiative (evident from the very large number of objections when this issue was first aired in 2021 and to this latest application). Up until 2017 or so the wing-walkers were an exclusive and professional part of the flying display team and wing-walking was not available to the general public. The team was sponsored by a number of high-profile companies who naturally wanted their products to be advertised to a wide audience both within the UK and abroad. The team was based at Rendcomb and apart from regular practices most of the flying displays naturally took place away from the airfield. This was in accordance with Obligation 11. But it appears that following agreement with the Civil Aviation Authority (CAA) in April 2018, ASB began to offer wing-walking experiences to the general public resulting in most of the flying now taking place at and around Rendcomb airfield rather than away from it.*
- 7.1.5 *RAL suggests that the original intention of Obligation 11 was to prevent use of the airfield for flying training as it:*

"could be a source of disturbance and inconvenience to local residents and those living in nearby villages by the constant circling of low-flying aircraft".

Despite RALs claim RPC has been advised its inclusion was for controlling noise and disturbance and that a flying school was never mentioned. It would have been strange anyhow as Obligation 7 would seem to cover this possibility far more specifically. RPC finds it difficult to reconcile this worthy concern for local residents with ASBs current mode of operation which involves considerable time spent at low level over and around the airfield with varying levels of engine noise. RPC accepts that wing-walking flights are not technically low-level circuits but this is semantics. To affected local residents and visitors it matters not whether the disturbance is caused by wing-walking flights

or a flying school. The difference is purely academic but the result is the same. In fact the presence of a flying school with modern aircraft might well be preferable to the disturbance caused by the operation of 80 year-old aircraft with very noisy engines, designed and produced at a time when noise pollution was not an issue.

7.1.6 Interestingly, ASBs website states that participants will:

"Take to the skies on the top wing of one of its Stearman aircraft and experience an exciting series of flypasts, zoom climbs, steep dives and banks in front of their family and friends on the airfield whilst being overwhelmed from the roar of the 450 hp engine"

RPC thinks this statement very neatly sums up the problem and the main reason for objections. The metric (number of wing-walking flights per day etc) that RAL proposes in its application is flawed and not appropriate because of what happens after the aircraft has taken off. Counting the number of take-offs is fine for somewhere like Heathrow where the aircraft immediately departs the local area. Originally, pre-public wing-walking, it was also a useful metric to measure activity at Rendcomb. But from the quote above it can be seen that every single public wing-walking take-off at Rendcomb is followed by a low-level display, lasting for at least 8-10 minutes, involving numerous manoeuvres at high-power that to people on the ground sound very much like take-offs in their own right (RPC suggests it is worth viewing www.gowalking.com to see what happens). Realistically this activity results in far more disturbance than might be expected from a single take-off and departure because the aircraft stay around the airfield for protracted periods. So, if ASB conducts 20 wing-walking flights/day involving 20 actual take-offs and then does what is described above, at and around the airfield following each take-off, the overall effect, from a disturbance and noise perspective, is very much greater. The applicant is seeking permission to do this for 100 days/year (most likely over the summer months). Whilst the participant may be overwhelmed by the roar of the engine (ASB quote above) local residents might describe it otherwise.

7.1.7 RPC notes that in the letter the applicant is:

"prepared to limit the number of commercial wing-walking flights that can take place on any one day and to no more than 1000 in a calendar year".

Seeing as the applicant should not currently be undertaking any at all (Obligation 11) this could be seen is somewhat presumptuous.

7.1.8 Since 1916 there has been an airfield at Rendcomb for a total of 36 years (33% of the time) while the field was used for agriculture for the other 72 years (67% of the time). Thus the claim in the letter that: "Part of the character of this area since the First World War has been an airfield in this location" is not supported by the evidence. RPC suggests that the character of this area is very definitely agricultural and that claiming that an airfield in the middle of an AONB somehow reflects the character of the area is nonsense. The comments made by Mr and Mrs Arbutnott in their objection letter dated 6th December last regarding the impact that flights from Rendcomb have on the local landscape are well-made.

7.1.9 Finally, the applicant makes the following statement:

" I would be grateful if you would recommend that the Obligation (11) be discharged or varied to ones that relate to the current circumstances as the fact that objections have been raised on the grounds that the Land has been used for commercial purposes would not be a sufficient reason to oppose this application."

This again is somewhat presumptuous as it is clearly not up to the applicant to decide whether the objections to commercial activity at Rendcomb, in breach of Obligation 11, are not a sufficient reason to oppose the application. Surely this is for CDC to decide.

7.1.10 *In summary, RPC is still unhappy with this new application which appears not to have changed fundamentally since its first iteration in 2021. RPC suggests that the recent change to ASBs business model very much represents "Development" and should be treated as such. Admittedly RAL has conceded that activities at Rendcomb since 2018 have breached the current S106 agreement and it has made some effort to appease a few local inhabitants. But approval of RALs application could actually mean that on popular summer days ASB would be free to fly for nearly 3 hours (20x8 minute flights) in the 6 hour window between 1000hrs and 1600hrs. So, RPC feels that allowing it in its current form would ignore the very valid concerns expressed by the many objectors and could be, and already is, an intolerable nuisance for those enjoying their gardens and the AONB. RPC opines that Obligation 11 continues to serve a very useful purpose, possibly even stronger than when it was first introduced, and that much tighter restrictions on ASBs commercial wing-walking flights would be needed before RPC was prepared to reconsider its objection. 03 March 2024"*

7.2 The site also lies within the vicinity of Chedworth Parish, North Cerney Parish, Daglingworth Parish, and Colesbourne Parish, all of whom have provided comments on the application:

Daglingworth Parish Council:

7.3 *"I am Chair of Daglingworth Parish Council who have been invited to comment as a neighbouring parish. Daglingworth is underneath the path of many flights from Rendcomb field and we wish to support the objections submitted by Rendcomb Parish Council. We do not want an intensification of this use and propose that the current situation be regularized by the Planning Authority to avoid further applications/amendments."*

North Cerney Parish Council:

7.4 *"North Cerney Parish Council repeats the comments in its letter of objection noted on the Planning Register on 7 November 2023, which apply equally to this new application.*

7.4.1 *In particular:*

1. If wing-walking is permitted to continue, the Council objects to any increase in the present number of wing-walking flights

2. The Council objects strongly to the proposal to remove condition (11) and replace it with a covenant only to preclude a flying school. The remainder of the current application to amend the Section 106 Agreement relates solely to limits on wing-walking activities. If condition (11) were modified as proposed, the Agreement would still permit 35 take-offs a day between 8 am and sunset on 180 days in any year, and the keeping of up to 25 aircraft on site at any time.

7.4.2 The proposed modifications would permit, in addition to 1,000 wing-walking flights a year, up to 5,300 non-wing-walking flights a year from the airfield, for commercial or other purposes. It cannot be known what commercial purposes there might be in the future.

7.4.3 If commercial wing-walking is permitted to continue, condition (11) should be modified to prevent any other commercial use."

Chedworth Parish Council:

7.5 "Chedworth Parish Council is disappointed that the restriction preventing wing walking flights overflying Chedworth Laines from the Whiteway to Fields Road as agreed between the operators and Chedworth Parish Council has still not been included in the draft S.106 agreement."

Colesbourne Parish Council:

7.6 "As a member of the Colesbourne Village Meeting planning sub-group I am writing to express the unanimous view of the sub-group that, having read the application, we are neutral as to its implementation. The village is not impacted by noise at the airfield and only minimally by the overflying of aircraft from Rendcomb. However, we would request that we are kept informed should there be further applications to change the terms of use."

8. Other Representations:

8.1 One-hundred and twelve third party representations have been received, objecting to the application on the grounds of:

- i. Increased noise from intensification of use;
- ii. Inaccuracies in Noise Impact Assessment;
- iii. Noise impacts affecting quality of home life;
- iv. The use is in breach of the current legal agreement;
- v. Impact on the tranquillity of the AONB;
- vi. Wing walking flights commenced in 2017, not 28 years ago;
- vii. The applicant is not a registered charity;
- viii. Increased use of fossil fuels;

- ix. Potential further alterations in the future;
- x. Impacts on nesting birds;
- xi. Nature of flights, low level and circuit flying;
- xii. Modification goes against the reason for the inclusion of the obligation in 1990;
- xiii. No public benefit from the development;
- xiv. Continued flying over Chedworth Conservation Area;
- xv. Increase in car movements and parking;
- xvi. Impacts on mental health and wellbeing;

8.2 Two third party representations have been received, raising general comments on the application on the grounds of:

- i. Benefits to local business from additional trade;
- ii. Employment for local professionals;
- iii. Noise produced from other aircraft not associated with application site;
- iv. Operators are as environmentally friendly as they can be;

8.3 Fifty-nine third party representations have been received, supporting the application on the grounds of:

- i. The airfield is essential to the community;
- ii. The level of disturbance is exaggerated;
- iii. The airfield generates money for charity;
- iv. Positive attraction within the area;
- v. Support educational opportunities;
- vi. The airport generates employment in the local area;
- vii. Not all air traffic in the area originates from Rendcomb;
- viii. Existing background noise produced by nearby highway;

9. Applicant's Supporting Information:

- 9.1 Covering letter; Noise Impact Assessment and Additional Noise Survey; Assessment produced by Matrix Acoustic Design Consultants

10. Officer's Assessment:

Introduction

- 10.1 Planning permission was granted on 20th June 1989 (Reference CT.6725) for "full planning permission for change of use from agricultural land to grass airfield on land opposite Rendcomb buildings, known as Rendcomb aerodrome." The planning approval was subject to a legal agreement which included eleven obligations relating to the use of the land as set out below:

1. *Not to fly aircraft or allow or permit the flight of aircraft from the land on more than one hundred and eight days in a calendar year;*
2. *On the days when flying from the land is permitted not to carry out or allow or permit more than thirty five take offs of aircraft on any such day;*
3. *On the days when flying is permitted not to carry out or allow or permit the taking off or landing of aircraft from the Land except between sunrise and sunset and not to carry out or allow or permit the taking off of more than two aircraft before 8:00am on any such day;*
4. *Not to use the land or allow or permit the use of the land for the stationing or flying of helicopters microlights or any aircraft with jet engines;*
5. *Not to construct or allow or permit the construction of a hard surfaced runway on the land;*
6. *Not to allow or permit the general public to have access to the land except on open days which shall not be held without the previous written consent of the Council;*
7. *Not to use the land or allow or permit the use of the land for the purposes of training flights the servicing or maintenance of aircraft with the exception of routine engine testing and essential routine maintenance which may take place immediately prior to the take off from the land;*
8. *Not to keep and/or station or allow or permit the keeping and/or stationing of more than twenty-five aircraft on the land at any one time;*
9. *Not to install or permit or allow the installation of landing lights on the land;*
10. *Not to install or permit or allow the use or installation of public address systems on the land without the previous written approval of the Council;*

11. *Not to use the land or allow or permit the use of the land for commercial purposes with the exception that aircraft used elsewhere for commercial purposes may be kept or stationed upon the land.*"
- 10.2 The current application has been submitted owing to ongoing commercial activity at the site. The submitted covering letter outlines that *"The applicant has openly operated wing walking from the airfield since 1992, a period of 28 years to the time that these investigations commenced, apparently following a complaint."* The operations have been in breach of clause 11 of the aforementioned legal agreement. As such, the current application has been submitted, seeking a modification or discharge of the planning obligations.
- 10.3 In this respect, Section 106A of the Town and Country Planning Act 1990 outlines that:
- "(1) A planning obligation may not be modified or discharged except—*
- (a) by agreement between the authority by whom the obligation is enforceable the appropriate authority (see subsection (11)) and the person or persons against whom the obligation is enforceable; or*
- (b) in accordance with -*
- (i) this section and section 106B or*
- (ii) sections 106BA and 106BC.*
- 10.4 The Act goes on to outline that:
- "(3) A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to the local planning authority by whom the obligation is enforceable the appropriate authority] for the obligation—*
- (a) to have effect subject to such modifications as may be specified in the application; or*
- (b) to be discharged.*
- 10.5 The 'relevant period' of five years has expired, and as such an application has been made to modify or discharge the legal agreement. In this respect, the Act states:
- "(6)Where an application is made to an authority under subsection (3), the authority may determine-*
- (a) that the planning obligation shall continue to have effect without modification;*
- (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or*

- (c) *if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications."*

The Case to Discharge the relevant clauses within the Obligation

- 10.6 The case to discharge the legal agreement rests on the test outlined in S106A (6)(b), that the obligation "*no longer serves a useful purpose*". This has been expanded upon within case law, which has outlined four essential questions: 'What is the current obligation? What purpose does it fulfil? Is it a useful purpose? and if so, would the obligation serve that purpose equally well if it had effect subject to the proposed modifications?'
- 10.7 Turning to the first three questions, the applicant has put forward the case that the reason for the inclusion of relevant clauses/obligations was to restrict the use of the site for flying schools. This is based on anecdotal evidence provided by the applicant who was involved with the original 1990 application. The applicant has put forward the case that the application solely relates to the use of the land, and the use of the airspace could occur notwithstanding the use of the site. The applicant has also outlined that the meaning of 'useful purpose' in respect of S106A is to be read as 'useful planning purpose'. It is noted that this point is debatable, and indeed Mansfield District Council, R (On the Application Of) v Secretary of State for Housing ([2019] PTSR 540, [2018] WLR(D) 553, [2018] EWHC 1794) found that "*I see no reason why, as a matter of principle, the precise character of the useful purpose served by the obligation should determine whether or not the authority has the power to discharge it. The critical question is whether the objection serves some useful function, the absence of which makes the maintenance of the obligation pointless. It follows, in my judgment, that the question for the Inspector here was whether the obligation served any useful purpose, not any useful planning purpose.*"
- 10.8 Notwithstanding this, the current application has received numerous objections and concerns raised by local residents in relation to noise impacts on amenity and wellbeing. Moreover, increased or uncharacteristic noise can impact the tranquillity of the Cotswolds National Landscape and local wildlife. The obligation does not specify that the intention is to solely restrict flying schools and instead refers to all commercial activities from/on this site. It is of note that obligation 7 includes separate reference to 'training flights'. Correspondence between the developers and Local Planning Authority dated 26/03/1990 during the course of the original application, noted two separate suggested restrictions, one relating to use for commercial purposes, and a second relating to use for training flights. Whilst the exact wording in the final wording in the final agreement restricts all commercial activity, the correspondence leading up to the approval appears to suggest that this was intended to relate to more than just flying schools.
- 10.9 The subject clauses with current obligation therefore serve a purpose of prohibiting any commercial activity at the site, with correspondence from the time of the original approval indicating this was to ensure local residents were not subjected to unreasonable levels of noise, and to avoid future intensification of the use at the site. This purpose is therefore considered to be 'useful' both in general and planning

terms, as it preserves the amenity of neighbouring residents and the tranquillity of the Cotswolds National Landscape.

10.10 During the course of the current application, the Local Planning Authority have sought the views of Southdowns Environmental consultants, who have provided a peer review report in response to the noise assessment provided by the developers. The Report notes at Paragraph 7.2.3 that "*Whilst it is acknowledged that aircraft noise may form part of the existing environmental noise, the nature of the proposed commercial wing walking flights, which involves aerobatics around a regular circuit using aircraft which have a prominent low-frequency tone, is likely to be significantly different to the majority of the overflights.*" It is therefore evident that the noise impacts arising from commercial flights would be materially different to that of non-commercial flights. Whilst the overall impacts will be explored later in this report, it is clear that the obligation serves a useful purpose in respect of the original development, limiting the impacts of noise of local residents and the valued landscape.

10.11 Subsequently, it is not considered that there are grounds to discharge the condition.

The Case to Modify the Obligation

10.12 Turning next to the case to modify the existing obligation, the developers have proposed the following amended wording to clause 11:

"No flying school shall operate from the Land"

10.13 The developers go on to suggest the removal of clause 11 and amendment to obligation 6, to be replaced with the following obligations:

- *"On the days when flying from the Land is permitted, not to use the Land or allow or permit the use of the Land on more than 100 days for commercial wing walking where members of the public, businesses or charities pay for their flights under the Civil Aviation Authority approved operations at Rendcomb Airfield.*
- *On the days when commercial wing walking takes place, no more than 20 commercial wing walking take-offs shall take place and these shall only be between 10.00 and 16.00 and not take place on Sundays. Commercial wing walking shall not take place on more than 5 days per week.*
- *The maximum number of commercial wing walking take-offs in any one calendar year shall not exceed 1000.*
- *Not to allow or permit the general public to have access to the Land except on 'open days', which shall not be held without the previous written consent of the Council, use the bridleway or attend an organised commercial wing walking day, in which case not more than 30 members of the public shall attend at any one time."*

10.14 As has been noted, the existing obligations are considered to continue to serve a useful purpose, and as such, it is necessary to consider the fourth question set out, namely, "would the obligation serve that purpose equally well if it had effect subject to the proposed modifications?"

10.15 The current restriction is considered to limit the impacts of noise on local residents and the valued Cotswolds National Landscape. Section 85(A1) of the Countryside and Rights of Way (CROW) Act 2000 (as amended by Section 245 of the Levelling-up and Regeneration Act 2023) states that relevant authorities have a duty to seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty. Furthermore, Local Plan Policies EN4 and EN5 state:

Policy EN4 - The Wider Natural and Historic Landscape

1. *Development will be permitted where it does not have a significant detrimental impact on the natural and historic landscape (including the tranquillity of the countryside) of Cotswold District or neighbouring areas.*
2. *Proposals will take account of landscape and historic landscape character, visual quality and local distinctiveness. They will be expected to enhance, restore and better manage the natural and historic landscape, and any significant landscape features and elements, including key views, the setting of settlements, settlement patterns and heritage assets.*

Policy EN5 - Cotswolds Area of Outstanding Natural Beauty (AONB)

1. *In determining development proposals within the AONB or its setting, the conservation and enhancement of the natural beauty of the landscape, its character and special qualities will be given great weight.*
2. *Major development will not be permitted within the AONB unless it satisfies the exceptions set out in national Policy and Guidance.*

10.16 The special qualities of the National Landscape are outlined within the Cotswolds National Landscape Management Plan 2023 - 2025 (CNLMP) and include "those aspects of the area's natural beauty which make the area distinctive and which are considered valuable, especially at a national scale. They are the key attributes on which the priorities for its conservation, enhancement and management are based." The Management Plans Statement of Significance includes "The tranquillity of the area, away from major sources of inappropriate noise, development, visual clutter and pollution;" and "An accessible landscape for quiet recreation for both rural and urban users, with numerous walking and riding routes, including the Cotswold Way National Trail." Indeed, Outcome 6 of the Cotswolds National Landscape Management Plan 2023 - 2025 states that "Noise pollution and visual disturbance are minimised to maintain tranquillity across the National Landscape." and Policy CE4 outlines that:

CE4.1. Proposals that are likely to impact on the tranquillity of the Cotswolds National Landscape should have regard to this tranquillity, by seeking to avoid and where avoiding is not possible, minimise noise pollution and other aural and visual disturbance.

CE4.2. Measures should be taken to remove and where removal is not possible minimise existing sources of noise pollution and other aural and visual disturbance in order to enhance the tranquillity of the Cotswolds National Landscape."

10.17 Tranquillity and the Cotswolds Management Plan have both been considered as material planning considerations, notably Appeal Decision APP/F1610/W/21/3271888 gave clear consideration of the issue of tranquillity in respect of noise issues.

10.18 With regard to amenity, Cotswold District Local Plan Policy EN15 states:

1. Development will be permitted that will not result in unacceptable risk to public health or safety, the natural environment or the amenity of existing land uses through:

a. pollution of the air, land, surface water, or ground water sources; and/or

b. generation of noise or light levels, or other disturbance such as spillage, flicker, vibration, dust or smell.

10.19 When considering whether the modified obligations would serve that purpose as equally well as the existing, it is necessary to consider whether there would be any additional harm arising from the additional commercial activities that would be allowed. It is acknowledged that activities have been ongoing from the site in various capacities for some time, in breach of clauses 6 and 11. Indeed, this forms part of the applicants case, with the covering letter outlining that *"The activities that have taken place at Rendcomb Airfield did not cause any problems, issues nor have they been the subject of any investigations by your Council for a period of about 28 years since they first took place. The land has been used as the base for the wing walking activities continuously since then, without any objection being made known to the applicant until the current investigations commenced."* Whilst noted, the Council has records of enforcement complaints in 2007, 2010 and in 2019 and objectors have made note of further concerns having been raised with the Council. Whilst the applicant may not have been aware of such concerns being raised, they are nevertheless relevant.

10.20 In order to address the potential impacts of noise arising from the proposed modifications to the agreement, the developers have provided a Noise Impact Assessment and Additional Noise Survey and Assessment 2122/R04 dated 2nd October 2023, both produced by Matrix Acoustic Design Consultants. The assessments have been peer reviewed by Southdowns Environmental Consultants on behalf of Cotswold District Council. The peer review report has been considered in full, with the following key findings considered particularly pertinent to the consideration of the current application:

"10.1.8 Matrix has continued with the adoption of the DfT Air Navigation Guidance threshold of 51 dB LAeq9hr as lowering the threshold would be 'too onerous'.

10.1.9 Prevailing research, recognised in the 2018 WHO guidance [22], suggests that the adverse impact of aviation noise has been historically underestimated. When further considering the context, with respect to the tranquillity of the Cotswold AONB, and related

local/national policy, the WHO 2018 guideline level of 45 dB Lden could assist in minimising the adverse effects on the health and quality of life.

10.1.10 Notwithstanding assessment criteria, the proposed 20 no. commercial wing walking flights per day would likely result in an increase in the environmental ambient noise levels (on the days of flight operations) based on the current assessments provided by Matrix. This is irrespective of whether the assessment is undertaken using the average or maximum values, or whether assessed on a 9-, 6- or 1-hour time averaging base.

10.1.11 Given the variability of the flight noise the magnitude of increase, and therefore the impact may fluctuate on any of the proposed 100 no. commercial flying days per year, as evidenced in variability the attended noise data.

10.1.12 CDC should strongly consider that national (NPPF) and local (CDC Policy EN5 and EN15, Cotswolds AONB Management Plan Policy CE4) planning criteria all emphasise the need to conserve and enhance the landscape and its special qualities and to avoid or minimise noise pollution and disturbances.

10.1.13 To conclude, Southdowns do not consider that the assessments provided robustly demonstrate the proposed commercial wing walking activity at Rendcomb Airfield would not result in adverse effects at the receptors immediately surrounding the site based on the following:

- the current predicted noise impact of 20 no. commercial flights is predicted to increase the existing ambient noise levels at the nearest sensitive receptors;*
- under IEMA guidance, Southdowns predict 'moderate' to 'substantial' impacts at positions 2 and 3, with 'very substantial' impacts at position 5;*
- insufficient consideration has been given to the character and tonal nature of the noise emissions from the wing walking flights; and*
- insufficient consideration has been given to show how the proposal aligns with local and national noise policy, particularly the requirement to conserve and enhance the Cotswolds AONB and the preservation of its tranquillity.*

10.1.14 It is therefore advised that Cotswold District Council should refuse the application to vary the obligations in the Section 106 agreement on the grounds of its noise impact."

10.21 It is necessary to consider the findings of the Southdowns peer review in the context of the current application and wider planning context.

Impacts on the Cotswolds National Landscape

10.22 The existing site and wider area consists of gently undulating landform interspersed with modest areas of built form. The site itself lies within the Landscape Character Type (LCT) 9 High Wold Dip-Slope as defined by The Cotswold Landscape Character Assessment (CLCA). However, owing to the nature of the use, impacts would also effect LCT's 7 High Wold, 8 High Wold Valley and 10 High Wold Dip-Slope Valley. As has been noted, tranquillity forms a special quality of the National Landscape, and is specifically referenced within the key features of the High Wold LCT that extends to

the north and north-east of the site. The CLCA states in respect of the High Wood that it contains "*Low density of settlement resulting in a sense of tranquillity and areas of dark skies.*"

- 10.23 The CNLMP outlines that "*although the Cotswolds National Landscape has a relatively high level of tranquillity, the National Landscape is being increasingly affected by unwanted, man-made noise and by activity arising from developments. For example, the increasing demand for air transport is leading to expansion of controlled air space over the National Landscape*"
- 10.24 In terms of the existing conditions, it is necessary to consider the 'baseline' for the site. The Matrix Report outlines that "*The general environmental noise levels are low, consisting of birdsong, road traffic and occasional commercial plane passes at high level.*" The approved development in the 1990's and the legal agreement as written allows for non-commercial use of the site as an airfield. The existing use allows for aircraft to use the site for one hundred and eight days in a calendar year, with no more than thirty five take offs of aircraft on any day. As such, whilst aircraft noise would undoubtedly form part of the approved context and background to the site, by virtue of the lower frequency and nature of flights, the area would still retain a generally undisturbed and tranquil character.
- 10.25 The approved use therefore potentially allow for a larger number of flights from the site and the nature of the flights would be very different. Observations within the Matrix report outline that "*Commercial wingwalker flights lasted approximately 8 minutes, with typically a 10 - 30minute break between flights.*" The nature of the wing walking flights means any noise is more localised. Unlike A - B flights, the wing walking flights follow a loop within the vicinity of the airfield. Indeed, the Southdowns peer review notes that "*whilst it is acknowledged that aircraft noise may form part of the existing environmental noise, the nature of the proposed commercial wing walking flights, which involves aerobatics around a regular circuit using aircraft which have a prominent low-frequency tone, is likely to be significantly different to the majority of the overflights.*" The review also notes that "*noise sources containing distinctive characteristics such as low frequency tones can result in relatively more disturbance or annoyance*".
- 10.26 The conclusions of the Southdowns peer review report find that there would be an increase in the environmental ambient noise levels on commercial flying days. Insufficient focus has been given within the submitted impact assessment to the character and tonal nature of the noise generated by the commercial activity, when compared with the baseline conditions. The level of additional noise, and nature of the noise, would result in an uncharacteristic impact on the tranquillity of this part of the Cotswolds National Landscape. The commercial wing walking flights would therefore erode the tranquillity of the National Landscape, and would fail to conserve or enhance the special qualities of the valued landscape.

Impacts on Amenity

- 10.27 Rendcomb Airfield lies within close proximity to a number of residential properties within the wider area. Owing to the path of the wing walking aircraft, flights go within close proximity to a number of residential properties and therefore have the potential to cause a significant impact in terms of noise and disturbance. The submitted Noise Impact Assessment identified six receptors, four of which were monitored for noise

impacts and undertook IEMA noise change assessments using both the measured unattended data and the calculated noise impact of the wing walking flights. Southdowns have subsequently undertaken a review of the information, and have produced the following findings:

7.1.12 With the exception of Position 5, the Matrix report concludes that there is a "slight" impact from the proposed commercial wing walking flights.

7.1.13 Southdowns has concerns about the IEMA effect descriptors used within the Matrix report, which are for receptors with 'some' sensitivity. Matrix should provide justification as to why the assessment has categorised the receptors in this way.

7.1.14 Given that the monitoring locations are representative of residential dwellings, located in an AONB, some of which have already raised concerns regarding the noise impact. Southdowns consider it would be more appropriate to consider these receptors as 'highly sensitive'.

7.1.15 As such, Southdowns has reviewed the effect descriptors based on highly sensitive receptors, for the initial Matrix 9-hour time base assessment, as well as the 6-hour time base for 20 no. flights, and 1-hour time base for 5-flights. A summary of the assessment comparisons is presented below in Table 7.1.

7.1.16 On the basis that the receptors assessed within the Matrix reports should all be considered as highly sensitive, then the 9-hour assessment using the average wing walking flights has potentially under-evaluated the degree of the effect within the Matrix report at Positions 2 and 3. The Matrix assessment has potentially over-evaluated the degree effect for Position 4. When considering the highest noise change values, it is likely that there would be 'moderate' effects at Position 4 and 'substantial' impacts at both Position 2 and 3.

7.1.17 The degree of the effects could be adjudged to be amplified if considering the noise change solely within the periods of flight operations (6-hour assessment) or for a reasonable worstcase 1-hour period (1-hour assessment), when using the highest attended measured wing walking flight the noise change would be considered 'substantial' at Positions 2, 3 and 4.

7.1.18 It should be noted, regardless of the assessment averaging time base, the effects at Position 5 are 'very substantial'."

10.28 The review finds that the assessments provided do not robustly demonstrate the proposed commercial wing walking activity at Rendcomb Airfield would not result in adverse effects at the receptors immediately surrounding the site. When considering the receptor points identified within the Matrix report, Southdowns predict 'moderate' to 'substantial' impacts at positions 2 and 3, with 'very substantial' impacts at position 5; contrary to the Matrix findings. Each of these points lie within close proximity of residential dwellings. Local Plan Policy EN15 outlines that development will be permitted that will not result in unacceptable risk to the amenity of existing land uses through the generation of noise. Given the moderate - substantial, and very substantial impacts that have been identified at, or within close proximity of residential properties, as well as the identified gaps in the evidence and justification for the works, it cannot be demonstrated that the potential impacts would not be unacceptable.

10.29 As such, the commercial wing walking flights would harm the amenity of near by residential properties owing to the level, type and intensity of the noise produced.

Summary

10.30 It has been established through the Southdowns peer review, as well as consideration of other material considerations, that the modification of the obligations through the removal or amendment to clauses 6 and 11 would result in the obligations failing to serve their purpose equally well. This is because the increased noise impacts arising from the additional commercial wing walking activity would erode the tranquillity of the Cotswolds National Landscape, and would harm the amenity of nearby residential properties.

10.31 As such, there are not considered to be reasonable grounds to discharge or modify the clauses/obligation of the S.106 agreement.

11. Conclusion:

11.1 Overall, it is considered that the obligations contained within the S.106 agreement continue to serve a useful (planning) purpose, and the modification of the obligation as proposed, would fail to serve that purpose equally or adequately well.

11.2 The application to discharge or modify the obligations is therefore recommended for refusal and the planning obligation shall continue to have effect without modification.

12. Reasons for Refusal:

Cotswolds National Landscape

Section 85(A1) of the Countryside and Rights of Way (CROW) Act 2000 (as amended by Section 245 of the Levelling-up and Regeneration Act 2023) states that relevant authorities have a duty to seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty. By virtue of the level of additional noise, and nature of the noise, the modification to the obligation would result in an uncharacteristic impact on the tranquillity of this part of the Cotswolds National Landscape. The commercial wing walking flights would erode the tranquillity of the National Landscape, and would fail to conserve or enhance the special qualities of the valued landscape. The modification would therefore be contrary to Local Plan Policies EN4 and EN5, Section 15 of the NPPF, The Cotswold National Landscape Management Plan and would fail to satisfy the duty under Section 85(A1) of the Countryside and Rights of Way (CROW) Act 2000 (as amended by Section 245 of the Levelling-up and Regeneration Act 2023).

Impacts on Amenity

The proposed development would result in moderate - substantial, and very substantial impacts on local residential properties. The submitted evidence has not provided

justification for the works and it has not been demonstrated that the potential impacts would not be unacceptable. The proposed modification of the obligation would therefore lead to unacceptable impact on public health and amenity, contrary to Local Plan Policy EN15 and Section 12 of the NPPF.