



**London Ashford Airport, Lydd, Romney Marsh, Kent, TN29
9QL, Planning Appeals, APP/L2250/V/10/2131934,
APP/L2250/V/10/2131936**

**Rebuttal of LAA/11/F by Mark Watts BSc (Econ), MSc, FRSA
For Lydd Airport Action Group (LAAG)**

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LAAG/11/F

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Supplementary Note

Applicant: London Ashford Airport Limited (LAAL)
Location: London Ashford Airport Limited, Lydd, Romney Marsh, TN29 9QL
Applications: Y06/1647/SH and Y06/1648/SH
Proposals: 294m runway extension and a 150m starter extension plus a new terminal to accommodate up to 500,000ppa
Inspectorate Reference: APP/L2250/V/10/2131934
APP/L2250/V/10/2131936
Document Reference: LAAG/11/F

Mark Watts

Date: 29th July 2011

1.0: Purpose:

1.1: This note has been produced to provide further clarification of the EIA regulations in the light of points raised during my cross examination by Mr Village on July 7th, 2011 and his challenging of my professional credentials. It is an opinion provided by British barristers specifically about the interpretation of the EIA regulations as they relate to Lydd Airport's development.

2.0: The Context

2.1: Npower Renewables Limited ("NRL") applied on 15 November 2002 for the Secretary of State for Trade and Industry's consent under section 36 of the Electricity Act 1989 to construct and operate a 26 turbine windfarm with a capacity of up to 78 megawatts at Little Cheyne Court, Walland Marsh, Kent. A public inquiry into the application for consent was held in October and November 2004 and recalled in January 2005 to deal with a late submission from Lydd Airport which alleged that its proposed radar would be adversely affected by the wind farm. The applicant Npower Renewables Ltd (NRL) was represented by and Andrew Newcombe QC and Jeremy Pike (now Francis Taylor). NRL was granted planning permission.

3.0: The Barristers Opinion

3.1: In these barristers closing submission on behalf of the applicant NRL (for the Lydd Airport part of the public inquiry (NRL 0/LAA)), they specifically commented on "The possible applications for planning permission by LAA" (see 7.1-8 NRL 0/LAA). At that stage the development proposals were characterised and summarised as:

- (i) an aspiration to expand to cater up to 2 million passengers per annum;
- (ii) an aspiration to cater for 300,000ppa in the short term;
- (iii) intended applications for planning permission for an extension of the existing runway and a new terminal and other related works and
- (iv) a programme of works to strengthen the existing runway, extend the runway, demolish certain buildings, install new lighting, and so on.

3.2: The barristers highlight that it is clear from the Masterplan and the plan attached to the request for the scoping opinion that LAA sought in the production of an Environmental Statement (ES) to assess only a comparatively small element of development in relation to its overall expansion plans - indeed that the EIA would not go beyond the works necessary for expansion to cater for 300,000ppa - the intended planning applications.

3.3: They subsequently highlighted the point made in my submission (Appendix B, LAAG/11/B, LAAG/11/D & LAAG/11/E) that under the EIA regime it is not permissible to separate an overall scheme of development into segments. They conclude in 7.6:

“By seeking to assess only the two intended applications for planning permission, as described in the request for a scoping opinion, LAA will fail to comply with the EIA regulations, and therefore SDC may not lawfully grant permission on that basis.”

3.4: They also point out in 7.7, that the works that were being carried out at the airport at the time, which included the development of aprons for B737s, were part of a larger long-term scheme of expansion. The works did not benefit from ‘permitted development’ rights and should have been assessed as part of the whole overarching scheme.

3.5: The relevant section of the closing submission follows.

XX GROSS COMMUNITARIAN

LITTLE CHEYNE COURT WIND FARM

LONDON ASHFORD AIRPORT OBJECTION -

CLOSING SUBMISSIONS ON BEHALF OF

THE APPLICANT

**[These submissions should be read in conjunction with and as an addendum to
the Applicant's Main Closing Submissions]**

These submissions are structured such that the principal issue arising out of the LAA objection is dealt with, and then various aspects of it, and certain other matters, are further reviewed.

1. The substance of the issue between the Applicant and LAA

1.1 It is important to understand the very narrow compass of the issue between the parties.

1.1.1 **The position of LAA prior to the Applications being submitted for the windfarm.** A number of matters of apparent concern to London Ashford

7. The possible applications for planning permission by LAA

7.1 By reference to documents obtained by NRL, and as a consequence of the evidence given to the inquiry by officers of LAA, the aspirations, and more immediate proposals, for expansion of Lydd Airport can be characterised as follows:

- (i) an aspiration to expand to cater for up to 2 million passengers per annum (ppa) by 2013;³²
- (ii) an aspiration to cater for 300 000 ppa in the short term;
- (iii) intended applications for planning permission, subsequent to (and conditional upon) the completion of an acceptable Environmental Impact Assessment, for (1) an extension to the existing runway at Lydd Airport, and (2) new terminal buildings and other related works; and
- (iv) a programme of works (said to benefit from Permitted Development Rights³³) underway to strengthen the existing runway, extend the apron, demolish certain buildings, install new lighting, and so on.

³² NRL/LAA/015 paragraph 3.1.1

³³ Presumably by reference to the Town and Country Planning (General Permitted Development) Order 1995

LAA commissioned Parson Brinkerhoff consultants to produce a Masterplan for the expansion of the airport.³⁴

7.2 LAA has also commissioned Parson Brinkerhoff to obtain a scoping Opinion from the local planning authority, SDC, as to the necessary scope of Environmental Impact Assessment carried out for the purposes of the planning applications necessary for the first tranche of the LAA expansion plans; and second, then to produce the Environmental Statement for those planning applications, following receipt of the SDC scoping opinion³⁵.

7.3 It is clear from a comparison of the Masterplan (in particular fig 7.1-7.3), and the request for the scoping opinion (in particular the plan attached to the request for the scoping opinion), that LAA seeks to assess (in the production of an ES) only a comparatively element of development in relation to its overall expansion plans, and only that development comprised in the intended applications for planning permission for the runway extension, and new terminal buildings etc. This was confirmed by Mr Gordon during xx. Moreover, Mr Deir informed the Inquiry (during xx) that Parsons Brinkerhoff have recently been contracted to produce the ES, but that those instructions did not require the necessary EIA to go beyond the works necessary for expansion to cater for 300 000 ppa (i.e. the intended planning applications).

7.4 The consequences of this approach are serious. Under the EIA regime it is not permissible to separate an overall scheme of development into segments in

³⁴ CD NRL/LAA/015

³⁵ The request for the scoping opinion, and the response from SDC, are at CD NRL/LAA/045

order, as Mr Stewart reminded the Inquiry, either to seek to avoid crossing the relevant thresholds for either Schedule 2 or Schedule 1 development, or alternatively to undertake EIA on individual phases of development of less magnitude than the eventual overall development. The relevant EIA Regulations³⁶ provide:

SCHEDULE 4

Information for inclusion in Environmental Statements

Part 1

...

4. A description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, **cumulative**, short, medium and long-term, permanent and temporary, positive and negative effects of the development...

(emphasis added)

7.5 Circular 2/99³⁷ states

“46. ...For the purposes of determining whether EIA is required, a particular planning application should not be considered in isolation if, in reality, it is properly to be regarded as an integral part of an inevitably more substantial development³⁸. In such cases, the need for EIA (including the applicability of any indicative thresholds) must be considered in respect of the total development...it will be important to establish whether each of the proposed development could proceed independently and whether the aims of the Regulations and Directive are being frustrated by the submission of multiple planning applications.”

(emphasis added)

³⁶ The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 SI 1999/293

³⁷ *Environmental Impact Assessment*; 12 March 1999

³⁸ Citing, correctly, *R v Swale BC ex parte RSPB* [1991] 1 PLR 6

- 7.6 By seeking to assess only the two intended applications for planning permission, as described in the request for a scoping opinion, LAA will fail to comply with the EIA Regulations, and therefore SDC may not lawfully grant planning permission on that basis.
- 7.7 Furthermore, it is clear from LAA's own evidence that the current works at the airport are part of the larger, long term scheme of expansion. Accordingly, those works should be assessed as part of the whole, overarching scheme. More significantly, those works do not in the result benefit from Permitted Development rights, because the EIA Regulations amend the General Permitted Development Order with the effect that where development (taken either on its own, or cumulatively with other development which is part of the same scheme) falls within Schedule 1 to the EIA Regulations (projects which must be the subject of EIA) it is not "permitted" by the provisions in the GPDO; the same applies to development falling within Schedule 2 to the EIA Regulations unless the local planning authority has issued a screening opinion pursuant to the EIA Regulations that EIA is not required for that development.³⁹ No such screening opinion exists in this case; nor could it, because LAA has not sought to obtain the view of SDC as to the need for EIA in respect of a scheme of development which includes the works presently being carried out. As a consequence, those works are not permitted and are being carried on in breach of planning control.

³⁹ Article 3(10) of the GPDO, as amended.

7.8 Additionally, where development carried out (apparently) pursuant to permitted development rights would normally engage Regulation 48 *et al* of the Conservations (Natural Habitats etc.) Regulations 1994,⁴⁰ in that it would be likely to have a significant effect on a European site “*either alone or in combination with other plans or projects*”⁴¹, that development shall not be begun until the developer has received written notice of approval from the local planning authority⁴²; moreover the appropriate nature conservation body (in effect, EN) is entitled to be notified of the proposed development (pursuant to permitted development rights) and give its opinion as to the effect on the European site in question, for the purposes of approval of the scheme by the local planning authority.⁴³ In this case there is a strong likelihood that assessment of the airport’s expansion plans, including the current works, will be required for the purposes of the Conservation Regulations; not least because of the stance EN/RSPB have taken in relation to development in locality of the existing and possible future European and International sites.

⁴⁰ SI 1994/2716

⁴¹ *ibid* reg. 60(1)(a)

⁴² *ibid* reg. 60 (1)

⁴³ *ibid* reg 61and 62

8. There is no substance in the case advanced by LAA and no aviation basis for refusing, limiting or delaying grant of the consents sought.

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13th January 2005