

The runway has been extended legally, but not physically

Management stated early in 2016 that the runway extension completion would be delayed until the end of 2017. There has been no update since this announcement. But there has been progress - during 2016 the runway was lengthened from a legal perspective.

Lydd Airport had 3 years from the decision date to implement the runway extension (until April 10th 2016), otherwise the permission would lapse. By digging trenches and laying ducting for cables for the future installation of the runway lights, the airport achieved “legal implementation” in February 2016. This miniscule amount of work is regarded by Section 56 of the Town and Country Act 1990 as sufficiently material to constitute lawful implementation of the planning permission to extend the runway

There were a number of pre-commencement conditions and Section 106 obligations before the above work could commence.

Of the 56 conditions associated with the planning application to extend the runway, 8 were required to be discharged (fulfilled) before the runway could be extended.

The pre commencement Section 106 obligations included the payment of £10,000 for a sound insulation survey of Greatstone Primary School. On completion of the runway extension, Lydd Airport must also pay £90,000 towards the cost of insulation. Although the runway is now considered extended from a legal perspective, it is not clear whether the £90,000 has been paid to Greatstone school, or whether physical completion of the runway extension is required to trigger the payment.

As a result of the above actions - digging a few trenches and meeting the required pre-commencement conditions and Section 106 obligations - Lydd Airport has been issued with a Certificate of Lawful Development to confirm that planning permission Y06/1648/SH (the runway extension) has been implemented.

The status of the remaining 48 conditions

The remaining 48 conditions have not been fully discharged but it is difficult to ascertain just how many of them are outstanding. Correspondence shows that Natural England and the Romney Marsh Internal Drainage Board are at loggerheads with the airport over the implementation of a number of the conditions. The airport’s failure to provide information and heed advice appears to be a common thread in the disputes associated with execution.

What is the position regarding the terminal?

Lydd Airport has been granted 10 years to implement the construction of the new terminal from the date of the decision – to April 10, 2023. A new terminal is not required to kick start the airport – it can survive using the existing terminal until passenger numbers become material.

Other developments on site and regulatory concerns

As set out in our March update, Lydd Airport in conjunction with Shepway District Council (SDC) quietly changed a restriction on helicopter movements at Lydd Airport set out in a condition attached to the April 2013 planning decision. This change will allow Bristow Helicopters Ltd to continue to operate its search and rescue (SAR) service without restrictions on its activity - and in conjunction with fixed wing activity supporting passenger numbers up to 500,000ppa.

The helicopter activity adds to the risk profile of the airport which was already considerably higher than it would have been under the planning permission granted in 1992 which later lapsed..

This situation has arisen for the following reason. Although the nuclear regulator also did not oppose Lydd Airport's proposed expansion in 1988 (government decision 1992) it combined its judgement with recommended restrictions on flight paths and the number of movements (flights) of aircraft types with the critical mass to cause a serious nuclear accident – aircraft with a MTOW > 5.7tonnes. These recommended restrictions were largely adopted by the government in its 1992 decision. By contrast, no such recommended restrictions were attached to the nuclear regulator's 2007 regulatory judgment and thus no restrictions on aircraft activity were included in the government's April 2013 decision.

Thus under the current permission, it will be permissible to have up to 40,000 flights annually of fixed winged aircraft with the critical mass to cause a nuclear accident (MTOW > 5.7tonnes) and at least 3000 helicopter flights with these weight characteristics. (40,000 fixed wing flights is the maximum possible.)

This contrasts sharply with the 1992 permission which allowed a maximum of 56,000 movements annually, but no more than 6,000 annual movements were permitted by fixed winged aircraft with a MTOW > 5.7 tonnes and no more than 600 annual movements by helicopters. Thus despite almost a 30% decline in total permitted movements under the latest planning decision, the number of aircraft with the critical mass to cause a nuclear accident could be almost 7X higher than in 1992 and the number of helicopter movements 5X higher.

When the nuclear regulator (ONR) produced its regulatory judgement in 2007 (not to oppose Lydd Airport's development) LAAG asked the ONR to explain

why it considered it necessary to have constraints on activity of aircraft types with the critical mass to cause a nuclear accident in its 1988 regulatory decision, yet failed to recommend such constraints in its 2007 judgement.

Regulator took 9 years to provide a risibly inadequate explanation

The ONR refused to provide a public explanation for this discrepancy, despite repeated requests for one. It was a question that “leapt from the page” and one which should have been addressed within the planning process.

Instead, it took almost 9 years to receive an explanation and that was only obtained in June 2016 after LAAG enlisted the help of Damian Collins (local MP). Indeed, it took him 15 months to obtain an explanation and that explanation was only given after his repeated requests for clarification. Moreover, the response was obtained over 3 years after the government determined in favour of Lydd Airport’s development.

The explanation given by the ONR was risibly inadequate and worryingly misinformed. It would not have withstood public scrutiny and certainly failed to justify the ONR’s decision not to replicate the bulk of the 1988 recommended constraints in its 2007 regulatory judgement.

Unfortunately Mr Collins was not prepared to take the issue further, despite concrete evidence of the discrepancy, the obvious shortcomings in the ONR’s belated explanation, the unreasonable 9 year wait for an explanation and the safety implications for the public.

Gifts for councillors

Background

Kent Police have at last acknowledged that there is an investigation into undeclared gifts given to councillors by Lydd Airport ahead of the Shepway District Council’s planning meeting on March 3rd 2010 to determine Lydd Airport’s planning application.

The Councillors overruled the recommendation of their own planning officers and the advice given by the statutory consultee Natural England to approve the planning application. They achieved this result by implementing a scheme hatched prior to the meeting with the help of the applicant, Lydd Airport.

The case in question arose from a 2011 High Court judgment (Neutral Citation Number: [2011] EWHC 354 (QB) - Case No: HQ09X00332) involving litigation between the former Managing Director of London Ashford Airport Ltd (Lydd Airport), Zaher Nicola Jeries Deir (Mr Deir) and Fahad Bin Saleh

Mohammed Al Athel (Sheikh Fahad al Athel) - the owner of Lydd Airport and associated companies.

There were a number of claims and counter claims by the respective parties in relation to Mr Deir seeking payment of unpaid directorship fees. The substance of the claims against Mr Deir included that he misused his company credit card and incurred excessive expenditure. Some of the items challenged were items that Mr Deir said constituted gifts to councillors. The judgment makes clear that there is evidence available and that the sums involved were material.

Why wasn't the investigation opened in March 2012?

This case was first brought to the Kent Police's attention in February 2012. LAAG then met with the then Chief Inspector of Folkestone Police on March 1st 2012. The Inspector took the case seriously and notified LAAG that an officer had been assigned to the case. It was over to the police - we had no further role to play.

As there had been no publicity about the case, we contacted the police in 2015 requesting an update - eventually in April 2016 Kent Police confirmed that an investigation into the matters LAAG had raised remained on-going.

But the Kentish Express has revealed that it was informed that the gifts for councillors' investigation opened on October 28th 2014 – well over two years after the date LAAG had been informed the investigation had begun.

Was political pressure applied to the police to defer the investigation? LAAG's contact with the police in March 2012 was a year ahead of the government's decision to approve Lydd Airport's planning application, while the revised starting date of October 2014 is 18 months after the approval decision.

Whatever the explanation, it does not detract from the fact that this delay has raised the risk of losing valuable evidence.

Happy New Year!

www.lyddairportaction.co.uk

2nd January 2017