



Mrs Louise Barton  
Lydd Airport Action Group (LAAG)  
The Hook  
Madeira Road  
Littlestone  
Kent  
TN28 8QX

13 May 2011

**By email**  
**BLmbarton@aol.com**  
Our ref. SMG/AM/586005

Dear Mrs Barton

**PINS refs. APP/L2250/V/10/2131934 and APP/L2250/V/10/2131936  
LAA nuclear rebuttal evidence and request for common ground meeting**

We write with reference to various items of correspondence between LAAG and Indigo (on behalf of the Applicant, London Ashford Airport Limited (LAA)) on nuclear matters in connection with the current call-in Inquiry for the determination of planning applications for development at London Ashford Airport.

The items of correspondence to which we focus on in this letter were received during the period 15 April 2011 to 3 May 2011.

This letter addresses:

1. LAA's request to have a meeting with LAAG to identify potential areas of common ground on nuclear matters;
2. LAA's response to document LAAG/112; and
3. LAA's response to document LAAG/111.

We deal with each of these matters in turn.

**1. Request for Common Ground Meeting**

LAA has sought on several occasions to arrange a meeting between their nuclear witnesses and those of LAAG. The purpose of this meeting would be to discuss potential areas of common ground on nuclear matters.

LAA is very keen to have this meeting in advance of the nuclear evidence being heard at the Inquiry in order to narrow the range of relevant matters to be considered within Inquiry time.

LAA considers that, in the absence of such a meeting taking place, Inquiry time will be used to explore technical matters of principle, which, in our opinion, are capable of being discussed and agreed between our respective consultants before 17 May 2011 rather than taking up valuable Inquiry time. We also do not

**Indigo Planning Limited**

Swan Court  
Worple Road  
London  
SW19 4JS

T 020 8605 9400  
F 020 8605 9401  
info@indigoplanning.com  
indigoplanning.com

Registered office  
Swan Court  
Worple Road  
London SW19 4JS  
Registered number 2078863

Directors  
Simon Neate  
BA (Hons) MRTPI  
Philip Villars  
BA (Hons) MRTPI  
Ian Laverick  
BSc (Arch) BArch (Hons 1)  
RIBA FRAIA  
Bill Davidson  
BA (Hons) DipTP DipUD MRTPI  
Mathew Mainwaring  
BA (Hons) MRTPI  
Sean McGrath  
BA (Hons) MSc MRTPI  
Tim Waring  
BA (Hons) MRTPI  
Helen Greenhalgh  
BA (Hons) DipTP MRTPI  
Doug Hann  
BA (Hons) MTPL MSc MRTPI

Consultant  
John Spain  
BBS MRUP MRICS MRTPI MIPi

**Also in Manchester, Leeds  
and Dublin**

consider that the Inquiry is the most appropriate forum for such technical matters, to be discussed and this has clear cost implications. The Inspector has consistently encouraged such discussions.

***Email from Alison McCue to Louise Barton et al. of 15 April 2011, 10:55***

An email from my colleague Alison McCue to you, LAAG nuclear witnesses and the Programme Officer on 15 April 2011, provided a summary of:

- i) The range of contact made between David Nicholls of Areva on behalf of LAA to David Pitfield, John Large and yourself for the purposes of arranging a meeting to discuss potential areas of common ground (these areas were identified by David Nicholls in his email) – David Nicholls made telephone and email contact with LAAG on eight occasions over the period 21 February – 1 April 2011.
- ii) David Nicholls' availability to meet with LAAG in advance of nuclear matters being heard at the Inquiry – eleven potential dates and a choice of meeting venues were offered to LAAG in this email.

This email was acknowledged by the Programme Officer in an email of the same date at 11:05. LAA's request for a meeting to identify potential areas of common ground on nuclear matters was welcomed by the Programme Officer.

You replied to this email on 17 April 2011 at 19.18 as follows:

***Email from Louise Barton to Alison McCue and Programme Officer, 17 April 2011, 19.18***

This email identified that you are taking responsibility for the Statement of Common Ground for nuclear matters and advised that you would respond fully on Tuesday 19 April 2011.

***Email from Louise Barton to Alison McCue and Programme Officer, 19 April 2011, 12:48***

Following your review of the correspondence between John Large and David Nicholls, you raised three points as follows:

*“(1) Common ground statements are normally conducted with the benefit of evidence from both parties to establish whether there are areas of agreement. We have yet to see Mr. Nicholls evidence.*

*(2) I would like to remind you that the Common Ground Statement CD4.4 (LAA) contains a section on the nuclear field. LAAG witnesses put forward a number of points during the preparation of this document. Since we were not able to agree on many points, few aspects are registered.*

*(3) My initial impression of the list of 6 points which Mr Nicholls sent to*

*Mr Large (11/3/11) is that it is presented in a way which invites LAAG to agree on areas where it has already clearly registered it is in dispute. Once we have received Mr Nicholls evidence, I shall ask the relevant LAAG witnesses to consider the matter again to see whether we can find areas of agreement that would save inquiry time.”*

LAA responded to this correspondence in an email to you and the Programme Officer on 27 April 2011, 10:59 as follows:

***Email from Alison McCue to Louise Barton and Programme Office, 27 April 2011, 10:59***

This email followed the submission of LAA's nuclear rebuttal evidence to the Inquiry. LAA's rebuttal to the nuclear case put forward by LAAG is by means of a rebuttal proof of evidence from David Nicholls and a rebuttal proof of evidence from Chris Roberts.

Following your receipt of LAA's nuclear rebuttal evidence on 21 April 2011, and including an allowance of time for LAAG nuclear witnesses to consider the material submitted to the Inquiry, a further request was made in Ms McCue's email for a meeting to discuss potential areas of common ground on nuclear matters.

This email also responded to the three points you raised in your email of 19 April 2011. To confirm, LAA's response to your points is as follows:

**1. The timing for the preparation of statements of common ground**

It is common and recommended practice for parties to meet to discuss potential areas of common ground in advance of proofs of evidence being prepared. LAA does not agree that LAAG needed to review LAA's nuclear rebuttal evidence before agreeing to a meeting to discuss potential common ground.

The purpose of the recommended practice is to focus proofs of evidence to address matters of conflict between parties and to provide evidence for those topics that are relevant to the determination of the planning applications under consideration. Ultimately, the purpose is to be efficient with Inquiry time.

LAA reiterated that, it considers that a meeting to discuss potential areas of common ground at the soonest possible date would therefore be of assistance to the Inquiry and considers that there are areas in the nuclear cases where both parties could agree common ground, particularly in relation to some of the more technical matters of principle which, in our opinion, are capable of agreement. Accordingly, we are extremely disappointed that LAA's desire to meet and discuss a nuclear statement of common ground has not been reciprocated by LAAG. We believe that LAAG's stance to be unreasonable and reserve our position.

## **2. CD 4.4 (LAA)**

CD4.4 (the statement of common ground between LAA and LAAG) was signed on 22 February 2011. Following this, a significant amount of new information has been submitted to the Inquiry by LAAG. In addition, new information from the HSE has been received post the preparation of CD4.4.

The range of nuclear matters worthy of discussion has therefore increased materially since the preparation of CD4.4. In LAA's view, this only serves to highlight the importance of the suggested common ground meeting taking place.

## **3. Correspondence between David Nicholls and John Large, 11 March 2011**

David Nicholls' six points to John Large in the email of 11 March 2011 were provided as a helpful starting point and intended to act as a prompt for discussion. For you simply to dismiss these six points without any discussion between our consultants and those of LAAG, and without suggesting your own points of discussion, is unhelpful and certainly not within the spirit of the guidance.

This email offered a telephone pre-discussion between yourself and David Nicholls in order to give David Nicholls an opportunity to explain the areas for which he considers we may be able to agree common ground following his review of the various components of the LAAG nuclear case. This offer was not taken up.

### ***Email from Louise Barton to Alison McCue and Programme Officer, 3 May 2011, 17:19***

This email advises that, on account of financial and practical reasons it is not possible to convene a meeting to discuss potential areas of common ground on nuclear matters.

LAA does not accept these reasons. The purpose of seeking to agree statements of common ground is to reduce Inquiry time and by implication, costs for all parties and their consultants to attend the Inquiry.

In relation to your advice that for practical reasons it is not possible for LAAG's four witnesses to all attend a meeting, we assume that this statement is with reference to geography and the other commitments LAAG's witnesses will have. LAA is disappointed in this being given as a reason to not be able to convene a meeting. LAA's own witnesses are based across Great Britain and witnesses for other topics (including those of other Rule 6 Parties) have been able to find one slot in their diaries to hold common ground discussions. LAAG is the only Rule 6 Party to simply dismiss the possibility of such meetings. Again, please note a teleconference has been offered by LAA. Again, we consider that LAAG's stance is unreasonable.

You advise in this email of 3 May 2011 that LAAG is not prepared to enter into any form of exchange with LAA on the subject of arranging a meeting to identify potential common ground on nuclear matters until you receive a written response from LAA clarifying Chris Roberts' appointment. The detail of your request in this respect is set out in LAAG/112 and LAA's response to this matter is now set out below. However, we would remind you that as you refused to hold a statement of common ground meeting before we submitted our rebuttal proofs of evidence on nuclear safety issues, it is plainly unreasonable for you to refuse to hold statement of common ground meetings now that we have submitted our rebuttal proofs of evidence on nuclear safety issues. If we had managed to speak with you and your consultants before we submitted our nuclear rebuttal proofs of evidence, it is possible that we would have avoided the need to submit a rebuttal proof of evidence by Mr Chris Roberts.

## **2. LAA response to LAAG/112**

LAAG/112 was submitted to the Inspector on 26 April 2011. It is a letter entitled 'Lydd Airport's New Aviation Witness'. It relates to Chris Roberts' role for LAA at the Inquiry and seeks a written explanation of his involvement. LAAG considers that the evidence of Chris Roberts is a rebuttal of "the entire aviation case covered by Malcolm Spaven, not just the aspects related to nuclear safety".

This letter makes the following additional points:

*"(1) It is clear that LAA has deliberately withheld information. The time taken for Mr Roberts to familiarise himself with the evidence and to write his 20 page report suggests that Mr Roberts had been engaged by LAA for weeks before April 21<sup>st</sup>.*

*(2) No permission has been sort (sic) or given for the introduction of the additional witness. Furthermore, the evidence given by Mr Roberts relates not only to nuclear safety issues but to wider aviation issues – aspects that have already been dealt with at the inquiry via Mr Maskens on behalf of LAA and Mr Spaven on behalf of LAAG.*

*(d) LAAG submits that it is procedurally improper to introduce such evidence without giving notice in advance and obtaining the inspector's permission. Accordingly LAAG submits that the Inspector should not take a decision on whether this evidence should be introduced until an explanation for its late production has been given and LAAG and other parties have been given the opportunity to make representations in the light of the explanation."*

In response to these points, it is essential to make an important distinction.

There is an accusation at point (d) in your letter that Chris Roberts' evidence is late. This is untrue. The requirement of LAA was to submit its nuclear rebuttal evidence by 21 April 2011 and this was adhered to. No deadlines were missed. The same cannot be said for LAAG's nuclear evidence – the delay in John

Large submitting his evidence was significant and its deadline was missed despite promises by you that it would be delivered by the many extensions the Inspector very kindly granted you. There has been a general pattern of LAAG witnesses drip-feeding nuclear evidence to the Inquiry outwith agreed timetables. This drip-feeding was unreasonable and has made it extremely difficult for LAA. This will be relied upon in the event that an application for costs is made.

LAA is seeking to call Chris Roberts and David Nicholls in order to allow them to provide a complete rebuttal case to LAAG's nuclear evidence. A key part of LAAG's nuclear evidence is provided by Michael Spaven, which focuses almost entirely on aviation matters. However, while Michael Spaven is a qualified light aircraft pilot he purported to give evidence on matters which were clearly outside his expertise and it therefore has been necessary to call a witness with specific commercial pilot experience to rebut appropriately matters raised in Mr Spaven's written and oral evidence.

In his evidence, Chris Roberts deals principally with flight operational aspects in connection with the matters of nuclear safety that have been raised by LAAG. He also addresses LAAG's concerns regarding the link between potential airborne terrorist activity and nuclear safety. Where he considers that a point stated by LAAG's nuclear witnesses is incorrect, and where it is relied upon for making an objection to the planning applications on nuclear safety grounds, these points are rebutted. Chris Roberts does not replicate the evidence of Tim Maskens. It provides a rebuttal to one of LAAG's four nuclear witnesses.

At the beginning of the Inquiry, LAA did not consider that nuclear safety was a key topic for the Inquiry, given the HSE's position of no objection to the planning applications. Indeed, the letter of 22 June 2010 (CD1.47) setting out the matters that the Inspector wished to be informed about for the purposes of his consideration of the planning applications, did not identify nuclear safety matters as a discrete topic. LAA therefore did not consider it necessary to call a witness on the topic of nuclear.

LAAG stated in their Statement of Case that they would only be calling Large and Associates in relation to nuclear safety. However, LAAG is now calling two further witnesses in relation to nuclear safety (Trudy Auty and David Pitfield) and calling Michael Spaven again to speak on aviation matters in relation to nuclear safety.

LAAG has now produced six proofs of evidence on this matter, much of which was submitted after the set deadlines for the submission of evidence. LAA was left with no option but to call witnesses to rebut LAAG's complete set of nuclear evidence. Initially, following the receipt of LAAG's case, LAA only planned to have David Nicholls as its nuclear witness, but with all the drip-feeding of evidence and the enlargement of LAAG's case, LAA has been left with no option but to engage Chris Roberts as well. This engagement was only made in April 2011.

LAA considers that the effect of calling Chris Roberts would be to establish

LAA's case on nuclear matters more efficiently through its own witnesses and to achieve an associated reduction in cross-examination time of the LAAG nuclear witnesses. Suggested adjustments to LAA's cross-examination estimates for the LAAG nuclear witnesses have been submitted to the Programme Officer for consideration.

### **3. LAA response to LAAG/111**

LAAG/111 was submitted to the Inspector on 20 April 2011. It is a letter to John Large entitled '*Appointment to Advisory Panel – Office for Nuclear Regulation*'.

It congratulates John Large on his appointment to the Office for Nuclear Regulation's Technical Advisory Panel for a report on the implications for the UK nuclear industry of the Fukushima nuclear accident.

However, we note that John Large confirmed in a letter to the Office for Nuclear Regulation on 3 May 2011 that he has decided not accept his invitation to the panel, citing difficulties with fee reimbursement as the primary reason.

LAA notes that John Large submitted new nuclear evidence to the Inquiry on 3 May 2011.

Yours sincerely



Sean McGrath

cc: Programme Officer  
LAA team