



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

Summary Proof of Evidence by Mark Watts BSc (Econ), MSc, FRSA

Ground 4: Why in line with the Scoping Opinion and Lydd Airport 's Master Plan, the planning application, the Environmental Impact Assessment and the Appropriate Assessment under the habitats Regulations should have been assessed on the basis of 2 million passengers per annum (2 million ppa), rather than the throughput considered of 500,000ppa.

For Lydd Airport Action Group (LAAG)

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LAAG/11/C

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This Proof of evidence addresses that part of LAAG's case that contends that the planning application should have been determined on the basis of 2mppa.

1. My name is Mark Watts BSc (Econ), MSc, FRSA.
2. I am Director of Luther Pendragon Brussels.
3. I am a consultant specialising in transport, planning, economic development and European Union regulation.
4. I have a degree in economics, BSc (Econ) and a Master of Science degree in Urban & Regional Planning (MSc), both from the London School of Economics and Political Science (LSE).
5. I was a UK Member of the European Parliament for ten years, where I specialised in transport and EU regulation.
6. I was MEP for Kent East, which included Lydd, and therefore I am very familiar with the area and the planning issues surrounding London Ashford Airport (LAA).
7. I was appointed by the Prime Minister to advise the Cabinet Office on EU regulation between 1999-2004.
8. I followed and advised on the amendments to the Environmental Impact Assessment Directive on behalf of the Government.
9. I was a planning officer for a London Borough for six years. I was a member of a local authority planning Committee in Kent for ten years.
10. Luther Pendragon Brussels specialise in EU regulation, law and policy making.
11. I have advised clients on EU regulations for several years.
12. I was elected a Fellow of the Royal Society of Arts in 2009.
13. The evidence which I have prepared and provide for this appeal in this report is true and I confirm that the opinions expressed are my true and professional opinions.

14. This proof of evidence examines LAAG's contention that the planning application should have been determined on the basis of 2 million ppa. As set out in the fourth entry in the LAAG statement of case.
15. First I review the evidence produced by LAA.
16. Second, I review the Report from Cranfield University on the economic viability of an airport with a throughput of 500,000 ppa (Appendix A).
17. Third, I review the Report I have produced which assesses whether for the purpose of the Environmental Impact Assessment (the Statement) the more substantial 2 million ppa figure should have been assessed. (Appendix B)
18. Fourth, I review the Opinion by Matthew Horton QC, which examines whether the current applications should be assessed in combination with the Master Plan.(i.e. 2 million ppa) (Appendix C)
19. Fifth, I review the relationship between EU law and UK law.
20. I conclude by summing up whether this evidence supports the contention that the planning application should have been determined on the basis of 2 million ppa.

The evidence produced by LAA

21. LAA has openly marketed its intention to develop an airport handling 2 million ppa.
22. The Master Plan sets a goal of 2 million ppa¹. (In particular page 1 – see Appendix D). The planning application² refers to the Master Plan and Para. 4.6 states:

“In the longer term, it is anticipated further applications will be submitted to enable the airport to accommodate 2pppa.”

Para. 1.12 says:

“... it is LAA's medium term aspiration to achieve 2 million passengers per annum (mppa..).”
23. The website sets out the plans for handling 2 million ppa:
 - a. “The airport plans to expand its operations to enable it to handle 2 million passengers a year by 2015.”³
24. Marketing literature promotes the concept of an airport handling 2 million ppa. *Core document CD11.10* (page 9) ⁴::

¹ Master plan, 2003, LAA

² London Ashford Airport at Lydd, Terminal Building Planning Statement, December 2006

³ http://www.lydd-airport.co.uk/documents/Community_Consultation_Strategy_290306.PDF

⁴ http://www.lydd-airport.co.uk/documents/The_case_for_LAA.pdf

"The immediate plan now is to develop the airport to handle two million passengers annually by 2014..."

25. Presentations have all confirmed the intention to cater for 2 million ppa. I attach an example. (Appendix E)

Report from the Department of Air Transport, Cranfield University

26. Cranfield University was asked to examine the assertion:

i. "Lydd Airport would remain loss making at a throughput of 500,000 passengers per annum (ppa)"

27. Their analysis demonstrates that it is highly unlikely that Lydd Airport could make a positive operating profit at levels of annual passenger throughput of 500,000.

28. They summarise and conclude by stating:

- *It is highly unlikely that Lydd Airport could make a positive operating profit at levels of annual passenger throughput of 500,000*
- *The only way an airport of such a traffic volume could be profitable would be to attract lucrative off-shore oil business, a flourishing business park or other activities on the airport that were not related to commercial air transport activities.*
- *Lydd Airport has none of the specific advantages that a very limited number of other UK airports have for successful commercial exploitation of the above activities, and could be seriously disadvantaged by the special status of the land surrounding the airport.*
- *Low passenger numbers are unlikely to attract the more successful concessionaires, severely limiting the potential to generate ancillary revenues*

29. This clearly demonstrates that 2million ppa is the true intention as no commercial operation sets out to lose money – the 500,000ppa is the first step to achieving the 2 million ppa objective. This is reflected by the growth of other UK airports. ⁵

⁵ <http://www.caa.co.uk/default.aspx?catid=80&pagetype=88&sglid=3&fld=1990Annual>

⁵ <http://www.caa.co.uk/default.aspx?catid=80&pagetype=88&sglid=3&fld=2009Annual>

Report by Luther Pendragon Brussels

30. LAAG do not subscribe to the view that LAA has conformed to the Environmental Impact Assessment (EIA) Directive and Regulations since it has submitted a planning application for 500,000 ppa with a Statement and intends to submit another planning application with an associated EIA for the second phase of the development. The belief by some is that the airport is conforming to the regulations since it cannot be accused of the form of incremental development designed to avoid conducting an environmental Impact Assessment. This is not the spirit or the letter of the EIA directive which aims to take into account the *overall development*, not just an integral part of it.
31. The current applications are an integral part of an inevitably more substantial development. The clear intention is to reach the figure of 2 million ppa. Phase 2 is certainly likely, if not inevitable. The more substantial figure should have been assessed and consequently the Statement does not contain all the information required by the Regulations and the Directive
32. In light of the location, the public consultation by Shepway District Council on the Scoping Opinion (that assumed 2 million ppa), UK Government guidance, EJC Case Law, and in particular the need to ensure the legislation is interpreted with wide scope and broad purpose, I conclude the current Statement is not substantially compliant with the Regulations and the Directive.
33. In accordance with the Regulations and the Directive if an applicant fails to provide enough information to complete the Statement, the application can be determined only by refusal.
34. In accordance with the Regulations and the Directive if the Secretary of State or Inspector refuse to require the applicant to undertake an assessment at 2 million ppa and subsequently grants planning permission, the objectors have the right to ask the UK Courts or the European Commission to quash any decision to grant permission. According to Government guidance the Courts has very limited discretion in cases involving environmental impact assessments because of the duty to comply with EC legislation.

Opinion by Matthew Horton QC

35. Matthew Horton QC was instructed to advise on whether the current applications should be assessed in combination with the Master Plan. (i.e. 2 million ppa).
36. His analysis of Article 6 of the Habitats Directive is particularly worth highlighting. He cites the need to conduct a 'cumulative assessment' of 'plans', and he argues the word 'plan' should be given broad meaning, and that the cumulative impact should assess the Master Plan. He clearly believes the appropriate assessment is 2 million ppa.

37. He concluded that:

“... on the facts of the present case, the Master plan should be the subject of appropriate assessment as part of the process to be followed prior to determining the current planning applications. In summary, my reasons are as follows:

The works and level of use proposed in the current applications are a “project” within the meaning of the Directive. Since they are formulated also in a form which has plans and explanatory text, I consider that they are also a “plan” within the meaning of the Directive.

As a matter of fact, the “project” or “plan” in the current set of applications, were devised in the context of a more ambitious “plan or project”, namely the Master plan, and are acknowledged to the first phase of that more ambitious plan or project.

It is correct that the second phase of development envisaged within the Master Plan is intended to take place sequentially rather than contemporaneously and therefore it is not within the same timescale as the first phase. Even if (which is far from certain in my opinion) that would justify not assessing that phase in combination with the first phase, such an approach would be based on a misunderstanding of the nature of a Master plan; such a plan encompasses both phases from therefore the first phase is not an isolated proposal separable from the second, but is part of an overarching project in the Master Plan.

That being the case, in my opinion the Directive and the Regulations made thereunder require that the current applications be assessed in combination with the Master Plan.”

Supremacy of EU law over UK law, and the need for to interpret purposively and having wide scope and broad purpose.

38. It has been ruled by the European Court of Justice (ECJ) that EC law is superior to national laws.⁶

39. There are many examples where the UK has in failed to properly transpose EU law, and interpreted EU Directives too narrowly⁷. EU law should be fully transposed and

⁶ Case 6/64, *Falminio Costa v ENEL* [1964] ECR 585, 593

interpreted with “wide scope and broad purpose”⁸. There have been a number of cases where the UK has been successfully challenged.

40. Courts must also adopt a purposive approach in interpreting laws implementing EU law.⁹
41. The intention of EU law is to require assessments for the relevant plans, which in this case includes the Master Plan. They should be taken into account at this stage, since later and subsequent assessments will clearly be prejudiced by the earlier decision and any environmental impacts that result.
42. Northern Ireland’s Habitat Regulation Guidance raises the possibility of a broader interpretation of a plan in cases where sufficient detail exists to ascertain whether the plan will have an impact on the European site¹⁰. It states:
 - a. *It may also be appropriate to include plans and projects, including policy statements, not yet submitted to a competent authority for consideration, but for which sufficient detail exists on which to make judgements on their impact on the European site.*
43. The Master plan provides a great deal of detail about the airport’s intentions and clearly should be assessed as part of this application.

Conclusion

44. The evidence from LAA, Cranfield University, Luther Pendragon Brussels, Matthew Horton QC, and legal precedents, supports the contention that the planning applications, the Environmental Impact Assessment and the Appropriate Assessments under the Habitats Regulations should have been assessed on the basis of 2 million ppa.

⁷ *Commission Versus United Kingdom, Case C-6/04 (Judgement of the European Court of Justice, delivered 20 October 2005)*

⁸ *Kraaijeveld – Dutch Dykes Case (C-72/95)*

⁹ *Lister v. Forth Dry Dock and Engineering Co Ltd [1989] 1 ALL ER 1134*

¹⁰ *Habitats Regulations Guidance Notes, 3.2.3 page 9 (2002), Northern Ireland Executive*