



Lydd Airport Action Group

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June 9th 2011

K. D. Barton BA (HONS) DIPARCH
The Planning Inspectorate
Room: 4/02, Temple Quay House
2 The Square, Temple Quay, Bristol BS1 6PN

Dear Inspector Barton

Clarification of points raised by Indigo Planning - May 13th, 2011
PINS refs. APP/L2250/V/10/2131934 and APP/L2250/V/10/2131936

I am writing to clarify issues arising from a letter from Indigo Planning to LAAG dated May 13th 2011 (LAA/110) and cc'd to you via email.

The letter relates to three matters:

- (1) LAAG's alleged failure to participate in a nuclear common ground statement.
- (2) LAA's response to LAAG/112 - LAAG's request for an explanation for the procedurally improper manner in which the Mr Roberts was introduced as a witness.
- (3) LAA's response to document LAAG/11 - a letter congratulating John Large and confirming that LAAG did not envisage a conflict of interest with his role as our nuclear safety advisor and his appointment to the Office for Nuclear Regulation's Technical Advisory Panel

Request for Common Ground Statement

LAAG would like to make the following points:

- (a) The common ground statement between LAA and LAAG (CD 4.4 (LAA)) includes a nuclear common ground segment in section 4: (4.1-4.14). There were two principals involved in producing the statement, Eilish Loftus from Indigo Planning and myself from LAAG. LAAG was assisted by Malcolm Spaven (Spaven Consulting) and John Large (Large & Associates). Since Mr Large leads LAAG's nuclear team and is familiar with the issues that have been addressed by the other nuclear witnesses he was considered the most appropriate expert to assist with the common ground statement on nuclear matters

(b) The common ground statement was agreed on February 21st 2011, signed on February 22nd and circulated to other Rule 6 parties on February 23rd. The nuclear statement is brief, due to the chasm in the differences of opinion between the two parties

(c) On February 21st, David Nicholls, LAA's nuclear expert contacted Dr David Pitfield one of LAAG's nuclear experts asking to meet to discuss matters in addition to those agreed in the common ground statement. Since this was the same day the common ground statement between LAA and LAAG was agreed and John Large was familiar with the Byrne methodology ¹ - the area Dr Pitfield had been engaged to address by LAAG at the public inquiry - it was difficult to envisage additional areas of agreement at that stage. Despite this, we agreed to co-operate.

(d) Since I was occupied with preparation for the public inquiry the next day (February 22nd) I asked John Large to deal with any additional amendments. John made available all relevant LAAG documents including drafts of work he had yet to complete.

(e) On March 11th 2011 the Fukushima nuclear accident occurred and the same day David Nicholls sent a one page list of possible common ground points.

(f) From March 11th John Large became increasingly involved with the aftermath of the Fukushima disaster. As a result I informed Indigo Planning on April 17th that I would be taking over the common ground additions. On reviewing the situation, and in particular the one page note of additional points from David Nicholls sent on March 11, it was clear that the exercise was fruitless as the points raised had been either covered in the discussions behind CD 4.4 or were known to be areas of conflict.

(g) In its letter dated May 13th, 2011 (point 3) Indigo Planning state that the six points provided by David Nicholls were a "helpful starting point". This was clearly not the case since we were supposed to be building on past discussions, not duplicating them.

(h) On April 21st LAA produced its first nuclear evidence. At that stage the evidence was scheduled from David Nicholls only. When it was circulated the evidence included that of an undisclosed new witness, Chris Roberts. We warned LAA in a email dated May 3rd that we could not meet with all our witnesses for financial and practical reasons and that the witnesses were currently focused on assessing LAA's nuclear evidence. Nevertheless, we offered after absorbing LAA's evidence, to put forward areas of common ground over and above that which has already been agreed, but that we were not prepared to enter into any form of exchange with LAA on this subject until we had received a written explanation about the circumstances surrounding Chris Robert's appointment.

¹ In responses to the planning application Mr Nicholls criticised (LAA/15/F- Appendix 1) Mr Large's application of the Byrne methodology (LAA/15/F - Appendix 2).

(i) The letter of explanation was given on May 13th. We did not pursue any further negotiations on the common ground statement since Mr Robert's produced aviation evidence, whilst Mr Nicholls nuclear evidence did not cover any new ground. Little could have been added to the common ground statement, bearing in mind the scale of the differences between the two parties.

(j) LAAG fully accepts that the purpose of common ground statements is to reduce inquiry time but in a situation where a common ground statement has already been finalised and where there are deep divisions in the approach to nuclear safety and therefore likely to be few areas of agreement, a group such as LAAG with limited resources must make hard nose decisions about relative benefits and costs. On reviewing the situation it was clear that the marginal gain from further discussions to the inquiry would be minimal and that these small gains would be achieved at a cost that could not be justified by LAAG. Indigo points out in its letter that a teleconference had been offered but overlooks that consultants charge for their time.

(k) To suggest as Indigo does (end of point 3 page 5) that - "*If we had managed to speak 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*" - is disingenuous as the common ground statement was being sort on nuclear matters, not aviation input.

LAA response to LAAG/112

(a) LAA did withhold information. Mr Roberts admitted he was engaged on April 4th 2011 under cross examination, yet his existence as a witness was only registered on April 21st when his evidence was produced along side that of LAA's known witness - David Nicholls.

(b) LAA's nuclear evidence was scheduled for publication on April 14th, not April 21st. A deadline was missed.

(c) LAAG was equally disappointed with Mr Large's late evidence but he had good reasons for the delays and these were communicated to both Mr Nicholls and the programme officers. The strength of evidence he gave on May 18th 2011 bears witness to his credentials as a nuclear expert and why his expertise was in demand post the Fukushima accident.

(d) Indigo state that "*Chris Roberts deals principally with flight operational aspects in connection with the matters of nuclear safety that have been raised by LAAG*". This is incorrect. Only 6 pages out of Mr Roberts 20 page report deal with nuclear related aviation matters. The balance deals with wider aviation issues covered by Mr Maskens.

(e) Mr Spaven of Spaven Consulting was mentioned as a consultant in LAAG's Statement of Case published on September 24th 2010. He produced his aviation proof of

evidence (LAAG/10/A) on time on December 22. This included a section on aviation matters related to the nuclear case. This accounted for 9 pages of his 58 page proof and was subsequently summarised separately as LAAG/10/C. LAA had ample notice of the content of Mr Spaven's aviation proof which included a section on nuclear matters.

(f) LAA claims it did not consider that nuclear safety was a key topic for the inquiry given the HSE's position of no objection to the planning application. LAA made an independent decision to exclude nuclear safety as a key topic in full knowledge that LAAG had vociferously challenged the HSE's position in its various responses to the Lydd Airport planning application and in lobbying the Secretary of State for a public inquiry. It is for LAA to answer why it felt compelled to make a late bid to counter the strength of LAAG's nuclear evidence when it had every opportunity to assemble a team early in the inquiry process.

(g) LAA state that: *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.* This incorrectly gives the impression that these witnesses were introduced without notice only recently.

(h) Large & Associates was the only expert in relation to nuclear matters mentioned at the time of the publication of LAAG's Statement of Case (September 24th 2010), but we reserved the right to call additional witnesses. In an email exchange between Yvonne Parker and LAAG dated December 20th 2010 (Subject: Sorry) we clarified the situation with regard to LAAG's nuclear witnesses. We indicated that we had three nuclear witnesses - John Large, Dr David Pitfield and Trudy Auty and that our aviation witness Malcolm Spaven would also contribute to the nuclear case.

(i) LAA state that: *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 is nonsense. The alleged drip feeding and enlargement of LAAG's case refers to pure nuclear evidence produced by John large and Trudy Auty. It did not involve aviation evidence.

LAA Response to LAAG/111

If it is relevant to the inquiry, Mr Large will communicate to you directly his reasons for not taking up the appointment.

A full email audit to support this letter will be provided if required.

Yours Sincerely

Louise Barton

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