



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

**Rebuttal of LAA/17/A by Mark Watts BSc (Econ), MSc, FRSA
For Lydd Airport Action Group (LAAG)**

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LAAG/11/D

AIRPORT LONDON ASHFORD, LYDD, ROMNEY MARSH, KENT TN29 9QL
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For Lydd Airport Action Group (LAAG)

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 (EU) 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 (MEP) 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 involved in both strategic, local and development control matters. 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. My recent clients include the Civil Aviation Authority, the Port of Tilbury London Limited, UPS, Maersk, European Commission and the Joint Parishes Group (JPG). I recently gave advice to the JPG in relation to the appeal by KIG in Maidstone.
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.

Purpose

14. To assist the inquiry I have submitted some points of rebuttal to the written statement of Mr Village and Mr Strachan (LAA/17/A). This is not intended to be an exhaustive rebuttal. Where specific points have not been dealt with, this does not mean that these points are accepted.

2mppa Intention

15. In 2.2 LAA allege: *Mr Watts alleges that the Applicant's "true intention" is to reach a throughput of 2mppa. These statements from Mr Watts are misleading for the simple reason that he is referring to documents that pre-date the submission of the Planning Applications and they do not reflect the Planning Applications that the Applicant has made.*
16. This is incorrect. Although I included pre application examples, this was not an exhaustive list as there are examples of statements made at the same time as the planning application as well those that post date its submission.
17. In a press release made by LAA at the time of the submission of the planning application on December 15th, 2006, Mr Deir, the Managing Director at that time made the following statement (see Appendix 1):

As part of our overall redevelopment proposals for Lydd, separate applications are also being submitted for the construction of a new two-phase terminal building. The first phase would allow for up to 500,000 passengers a year, and the second would increase this capability to allow two million passengers to pass through the airport each year," added Mr Deir.

The proposed new terminal building is subject to two separate planning applications, each covering the two phases of building development.

Phase one is a detailed planning application for a new terminal building of two linked rectangular structures with shallow curved roofs and floorspace of 81,860sq ft (7,605sqm) to accommodate 500,000 passengers a year. The construction period for phase one of the terminal is scheduled to last around 18 months from 2009, becoming operational in 2010.

A huge number of jobs will be created if the applications are approved. The runway extension will provide four full-time equivalent construction jobs, with an additional 180 direct jobs created when the extension is operational and the airport is accommodating 300,000 passengers a year.

In addition, it's estimated that phase one of the terminal building will create 28 full-time equivalent construction jobs and once operational 300 direct jobs. Phase two will support 15 full-time equivalent construction jobs and during operation some 1,200 direct jobs - making a total of 43 construction and 1,500 direct jobs created as a result of phases one and two.

18. The press release serves to underline the real intention of the airport to grow the airport to 2mppa. Mr Deir promotes the two staged development of the terminal (and its employment implications) in line with the scoping opinion even though stage 2 of the terminal application was not formally included in the planning application submitted on December 15th.

19. In Chapter 18 (Cumulative impacts) of the original planning application (CD 1.17) for the runway extension, table 18.3 (page 375) clearly outlines the two phased nature of the development consistent with the scoping opinion (reproduced in Appendix 2, Page 1):

A new terminal building built in two phases is also being proposed for LAA and is subject to a separate planning application. The construction phase of Phase 1 is planned for 2009 and is expected to take approximately 18 months and Phase 2 is planned for 2013 and last approximately 12 months.

20. Table 18.5 (page 376) (Page 2, Appendix 2) then goes on to outline the severity of the impacts of phase 1 and phase 2 of the terminal development on a range of factors and shows the particularly detrimental impact on: Ecology and Natural Conservation, traffic and transport, air quality and noise and vibration with the latter three areas being more pronounced in their impact than phase 1 alone.

21. The website continues to contain references to 2mppa in its information to Airlines - see Appendix 3

The ongoing improvement programme at LAA only represents part of a planned strategy to advance the airport to 2m passenger a year capability by 2014.

22. In an email from Lydd Airport to British Energy dated April 25th 2007, subsequently forwarded to Tim Allmark (HSE) - secured as a result of a LAAG FOI request - LAA outlines the indicative aircraft types and fleet mixes for the 300,000ppa, 500,000ppa and 2mppa throughput scenarios (Appendix 4).

23. In a letter from Geoffrey Podger dated April 1st 2009 to Mrs Auty he explains (under Maintenance Hub heading) why the HSE examined the airport operations up to 2mpppa since it had "already been expounded by the applicant as its intention" (see LAAG/3/B - Appendix 1, letter 3).

Following our recent conversation I thought it would be useful to explain why we examined the airport operations up to a throughput of 2,000,000 passengers per annum when the current planning application is only predicated on 500,000 passengers per annum. We considered that it would be unfair to advise the planning: authority over the effects of a modest development without examining

the effects of a greater expansion, when this had already been expounded by the applicant as its Intention. Within the broader considerations of the local authority, our views over the effects on nuclear safety of the larger growth were considered to be relevant. In addition, we routinely investigate the effects of changes to the potential hazard on the risks posed to nuclear installations as part of assuring ourselves that there is no disproportionate increase in risk as the postulated hazard changes.

24. Mr Ellames in his evidence (SDC/4/A) states in 2.2 (iv):

The background to the current submissions is aspirations to expand to the airport to 2 million ppa, based on projected aviation growth. Responding to this potential growth results in the need for a runway extension to enable larger fully laden planes, followed by terminal development to facilitate additional domestic and European services.

25. This statement clearly demonstrates that it is the Council's current understanding that the airport's objective is to grow to 2mppa.

26. The draft Section 106 Agreement (CD 17.1 section on Employment and Training (11.)) states the following which suggests that Phase 2 is more than a mere aspiration.

11.1 The Airport Operator shall submit:

11.1.1 prior to the Runway Extension coming into Operation, the Runway Extension Jobs and Business Strategy to the Council for approval;

11.1.2 six months prior to the Commencement of the Terminal Building, the Phase 1 Jobs and Business Strategy to the Council for approval; and

11.1.3 on Occupation of the Terminal Building, the Phase 2 Jobs and Business Strategy to the Council for approval.

27. It then goes on to say is in 11.2:

11.2 The Airport Operator shall not:-

11.2.1 Operate the Runway Extension unless and until it has implemented the approved Runway Extension Jobs and Business Strategy and the Airport Operator shall thereafter carry out the approved Runway Extension Jobs and Business Strategy until the earlier of the End Date of the Runway Extension and the date that the approved Phase 2 Jobs and Business Strategy is implemented (unless otherwise agreed with the Council);

11.2.2 Commence the Terminal Building unless and until it has implemented the approved Phase 1 Jobs and Business Strategy and the Airport Operator shall

thereafter carry out the approved Phase 1 Jobs and Business Strategy until the earlier of the End Date of the Runway Extension and the date that the approved Phase 2 Jobs and Business Strategy is implemented (unless otherwise agreed with the Council); and

11.2.3 permit the Occupation of the Terminal Building unless and until it has implemented the approved Phase 2 Jobs and Business Strategy and the Airport Operator shall thereafter carry out the approved Phase 2 Jobs and Business Strategy until the End Date of both the Runway Extension and the Terminal Building (unless otherwise agreed with the Council).

Background - Airport Capacity and Growth

28. Overall airport capacity is determined by runway length. Terminal capacity is the next limiting factor. In the case of Lydd the lengthening of the runway will allow passenger numbers in excess of the planning application number of 500,000ppa - indeed well in excess of the Master Plan objective of 2mppa. In the case of the terminal at Lydd the intention is to use the current terminal, up to a throughput of around 300,000ppa (see LAA/4/A (4.16), then build the new terminal.
29. When terminals are built there is a step jump in capacity. The new terminals are generally constructed before the peak capacity of the old one is reached, as would most likely be the case at Lydd. The new terminal at Lydd will not be designed to grow capacity from ~ 200,000-300,000ppa to 500,000ppa, that would be commercially untenable, but to a larger capacity - say 1.0 mppa although the step jump is at the discretion of the airport and could be greater if management felt confident about demand.
30. The floor space area of the new terminal relative to the old terminal - 7380 sq metres compared to the existing terminal of 2500 sq metres (see CD 1.14, Chapter 4, page 36, 4.1.2-4.1.5) indicates this step jump and on a simplistic pro rata basis, capacity of ~ 900,000ppa.
31. Further, the throughput from a given terminal can be increased by lengthening the hours of operation. It is possible that the new terminal could accommodate 2mppa should the airport adopt 24 hours of operation. Although the conditions state:

Following the Runway Extension coming into Operation, no Flight Movements, except in relation to Emergency and Governmental Activities as defined, shall be permitted from the Airport between 23.00 and 07.00 hours
32. The airport has a 24 hour license and these conditions could be varied over time. Clearly there is the possibility that the existing infrastructure could accommodate the 2mppa objective.
33. Another factor that needs to be taken into account with regard to the existing terminal's capacity to furnish more than a throughput of 500,000ppa is the

redundancy in the design ie the built in spare capacity. For example, an airport's design could include a spare luggage carousel to be used as a back up if a carousel breaks down. Due to economies of scale, this spare carousel would be adequate to provide backup for a far larger throughput than 500,000ppa.

34. Thus the infrastructure to be constructed as a result of the current planning application will support passenger throughput higher than “the development” for which the planning application is sought and therefore the potential to produce adverse impacts beyond the footprint of 500,000ppa.

Momentum once an airport is established

35. When airports are successful they grow rapidly and the economic and social imperative for them to continue once they are established is extremely strong, despite any adverse environmental impacts they may produce. The EIA regulations are designed to ensure that the adverse impacts are understood from the outset.
36. The table below shows the growth in passenger numbers of UK airports over the last 20 years and clearly demonstrates the momentum in the system when airports are successful. Twelve of the twenty airports shown have increased there turnover by a factor of at least 3 times over the last 20 years with airports such as Stansted increasing throughput by a factor of 16.

Selected UK Airports - Passenger Numbers - 2010 vs 1990

Airport	1990 Number	2010 Number	% Change %	Times X
Stansted	1,177,813	18,573,803	1,477	16
London City	230,227	2,780,582	1,108	12
Liverpool	485,506	5,013,940	933	10
Prestwick	194,938	1,662,744	753	9
Bristol	814,861	5,747,604	605	7
Bournemouth	142,356	751,331	428	5
Southampton	492,156	1,733,690	252	4
Edinburgh	2,602,547	8,596,715	230	3
East Midlands International	1,282,230	4,113,501	221	3
Exeter	237,044	744,957	214	3
Luton	2,696,641	8,378,717	211	3
Newcastle	1,587,246	4,356,130	174	3
Inverness	222,988	530,213	138	2
Cardiff	624,304	1,404,613	125	2
Norwich	218,964	425,821	94	2
Manchester	10,475,641	17,759,015	70	2
Blackpool	137,456	235,340	71	2
Heathrow	42,950,512	65,881,660	53	2
Gatwick	21,178,217	31,375,290	48	1
Glasgow	4,405,456	6,548,865	49	1

Source: CAA

European Law - Environmental Impact Assessments

The Directive

37. Council Directive (85/337/EEC) controls Environmental Impact Assessments. The directive states:

“the best environmental policy consists in preventing the creation of pollution or nuisances at source, rather than subsequently trying to counteract their effects [and] affirm[s] the need to take effects on the environment into account at the earliest possible stage in all technical planning and decision-making processes ...”

38. It provides for provides procedures “for the implementation of procedures to evaluate such effects”. The general principle is said to be that:

“Whereas development consent for public and private projects which are likely to have significant effects on the environment should be granted only after prior assessment of the likely significant environmental effects of these projects has been carried out; whereas this assessment must be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the people who may be concerned by the project in question ...”

39. The primary obligation imposed upon member states by the Directive contained in article 2(1) is to “adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue *inter alia*, of their nature, size or location are made subject to an assessment with regard to their effects”.

Application at Lydd

40. LAAG acknowledges that Lydd Airport is not attempting to split its development project to avoid an EIA. An EIA covers the existing two planning applications including Phase 1 of the terminal and it is stated that a separate planning application will be made for Phase 2 to increase throughput to 2mppa - we assume that this will also be accompanied by an EIA.
41. This is a more subtle situation. The horizon of the development proposal before Shepway, subject to an EIA, has been truncated from that outlined in the scoping opinion to increase the likelihood of the development avoiding adverse impacts on the protected habitats that surround the airport since most of the adverse impacts of this project are directly related to the level of passenger output (for example noise and pollution). By adopting this approach LAA has already achieved success as Natural England has agreed that the nitrogen deposition threshold would not be breached on the Dungeness Special Area of Conservation (SAC) on the basis of a throughput of 500,000ppa (see Statement of Common Ground between Natural England and LAA - CD 4.9 (3.1-3.3)) and therefore on air quality grounds that the development will not adversely affect the SAC.
42. Further, once LAA is established as a regional airport there will be pressure to sustain the alleged economic and social benefits and these benefits could override

the constraints of the Habitats Regulations when permission is sought for phase 2 of the terminal to cater for 2mppa. Despite the demonstration of adverse impacts, it is possible that the project could proceed under the Habitats Regulations if it were perceived that expansion was in the overwhelming public interest and there was no alternative to the development. The alternative test (of the Habitats Regulations) cannot be passed today because of the presence of Manston Airport with its considerable excess capacity. If Manston reaches peak capacity in the future and is finding difficulty in obtaining support for expansion it could be deemed in the overwhelming public interest to allow expansion at Lydd.

43. In addition, the infrastructure defined in the current planning application - the extended runway and phase 1 of the terminal - would support a higher throughput than the notional 500,000ppa forming the basis of the current planning application.

Supporting Case Law

44. British case law indicates there are limits to how far the EIA process can go in relation to embracing future development - the direction given by the body of case law hinges on the need for something concrete to be applied for.
45. For example, in *R (Candlish) v Hastings Borough Council [2005] EWHC 1539* cited by LAA, an urban development was split into two phases, with the project being initiated by a non-EIA planning application for a service road, which was then to be followed by an EIA-accompanied planning application for an industrial estate. Despite the two projects being inter-linked and interdependent, the UK High Court was content that the phase 1 link road did not warrant an EIS. The operative feature was the inability to make an assessment because there was not sufficient substance on which to make a judgement. LAA notes this point in 3.9.5 of LAA/17/A. The relevant sentence in the above judgement (last sentence of paragraph 61) is reproduced below.

“If – as Mr Wolfe’s argument connotes – it is nevertheless in some way to be treated as an application for the Ore Valley project then that poses difficulties for the assessment said then to be required: for even if there was a probability that there might be some eventual Ore Valley project there could be no certainty at all as to what eventual size and form (e.g. in the mix of housing, shops, offices etc) it might ultimately take or be permitted to take: assuming planning permission for that project was granted at all.”

46. The lack of a basis for making an assessment of future impacts is also cited in *R (On the application of Littlewood) v Bassetlaw DC [2008] EWHC 1820 (Admin)*. This case is procedurally similar to the Lydd Airport application in that the Council’s Scoping Opinion indicated that at the time of its production that the application site should not be considered in isolation from the whole of the site but by the time the application came to be determined no proposal for the wider area had been formulated by the applicant - a point cited in LAA/17/A in 3.9.9.

“27 It is clear from the Council’s Scoping Opinion dated 21st February 2007 that they thought at that time that the application site should not be considered in isolation from the whole of the Steetley site. However, by the time the application came to be determined on 29th October 2007, no proposal for the wider area had yet been formulated by Laing.”

47. The judgement argues that it would be impossible to make a cumulative assessment of the proposed development and the development of the rest of the site since there were no signposts in the local plan or planning applications for the wider site upon which a cumulative assessment could be made.

“32. Equally importantly, at that time no proposals had yet been formulated by Laing for the rest of the site for the reasons that I have mentioned. I simply do not see how there could be a cumulative assessment of the proposed development and the development of the rest of the site pursuant to the EIA Regulations when there was no way of knowing what development was proposed or was reasonably foreseeable on the rest of the site. The site was not allocated for development in the local plan. No planning application had been made and no planning permission given in respect of the rest of the site, and no proposals had yet been formulated for that part of the site. There was not any, or any adequate, information upon which a cumulative assessment could be based. In my judgment, there was not a legal requirement for a cumulative assessment under the EIA Regulations involving the rest of the Steetley site in those circumstances.”

48. This is not the situation at Lydd Airport. Development of Lydd Airport is supported in the local plan and a good deal is known about the nature of the outstanding development - phase 2 of a terminal building to enable Lydd Airport to grow passenger numbers from 500,000ppa to 2mppa. The airport has provided a schedule of the types of aircraft and numbers of aircraft movements to achieve this throughput (see Appendix 4) and the aircraft will be using the same flight procedures as those portrayed under the 500,000ppa scenario so that environment effects such as noise and pollution can be ascertained. Indeed these potential adverse impacts, and others, have already been identified in the current planning application (see Appendix 2) as they are an extension of the existing planning application.
49. Further, as I pointed out in 28-34 the potential capacity of phase 1 of the terminal development will be larger than 500,000ppa while the infrastructure to achieve the 2mppa objective is largely in place, see my submission Appendix B, LAAG/11/B, para 33 page 5 or CD 1.30, para 7.1).

“The current design of the terminal building provides an adaptable design solution which is able to change over time, notably to accommodate 2 million passengers per annum to reflect phase II of the airport expansion. Therefore the sub structure and superstructure is designed to accommodate internal and departure re-configurations. With the proposed design scheme, the airport will match anticipated future standards for growth, security, sustainability, and design.”

50. Similar comments to the above were expressed in CD 1.23K - London (Ashford) Airport Design Statement September 2007, page 2

“The terminal has been designed with an adaptable layout, in order that the evolution of the terminal building from Phase I to Phase II may be achieved with the minimum of impact. The terminal has been designed as a steel framed building, that will be able to take the majority of the structural load during the construction of Phase II. By ensuring that adaptability is inherent within the terminal design, the terminal will continue to be as operational as possible during construction of Phase II.”

51. In this instance there is sufficient known about the airport's future intentions to require the development to be assessed to a throughput of 2mppa. In other words the Case Law cited by Mr Village and Mr Strachan supports my contention that 2mppa is the appropriate level for the Statement.

Other factors

52. Lydd Airport has not been required to stipulate the full capacity of Phase 1 of the terminal development which would yield a higher throughput than 500,000ppa - the scope of the existing planning application. The floor space area indicates a capacity of close to 900,000ppa.
53. It is clear from the legal opinion of Shepway District Council's own solicitors (CD 2.9, Page 35-56 - Opinion, Teresa Grutchfield, Solicitors to the Council) that she believes there is a case for assessment up to 2mppa if the physical capacity of the terminal is greater than the 500,000ppa for which the planning application is sought, although she equally does not understand the nature of the application, believing the new terminal to be only physically capable of accommodating 500,000ppa - see para 19 below:

In this respect, I consider it important to distinguish the present case from the situation where the Council was being asked to approve an application for which the consequences (in terms of passenger numbers) were unknown, and might range between 500,000 to 2 million. In such a case, the proper figure for assessment would be 2million ppa, since it would be entirely possible that this would result if this application were granted permission. However, this is not, as I understand it, the situation here, since the proposed new terminal is only capable of accommodating 500,000 passengers, and a throughput of 2 million ppa would not be possible without additional facilities. Moreover, if there were any concern that the current proposals might be physically capable of accommodating more than 500,000ppa, that concern could (and in my view should) be addresses by a condition capping passenger throughput at that level.

54. Although this is a judgement relating to the application of the Habitats Regulations and the need for an appropriate assessment the author is drawing parallels from the EIA regulations.

Request for Further Information and Scoping

55. With reference to Section 5 (Request for Further Information) and Section 6 (Scoping Opinion) of LAA17A, and in particular as regards the compliance of the Statement with the Scoping Opinion, Mr Village and Mr Strachan quote only partially from my quotation from paragraph 95 of Circular 02/99 that "*an ES is not necessarily invalid if it does not fully comply with the scoping opinion.*"

56. In fact this quotation continues:

"However, as these documents represent the considered view of the local planning authority or the Secretary of State, a statement which does not cover all the matters specified in the scoping opinion or direction will probably be the subject to calls for further information under regulation 19 (paragraph 109-112)".

57. As previously stated in this case we are not dealing with a Statement that fails to 'fully comply', but one that does not comply at all as regards to an assessment at 2 million ppa.

58. A regulation 19 request is as outlined above the probable and in my view the appropriate, response in such cases. There is no reason in this case to suggest otherwise.

59. Mr Village and Mr Strachan seem to be confused as to who is responsible for asking and providing further information. Deficiencies in the Statement have been pointed out by LAAG to the appropriate authorities at the earliest opportunity. But it is for the applicant, Secretary of State, or the Inspector, not for objectors, to ask for it, and the applicant to provide it.

Conclusion

60. The Environmental Statement should have been based on a throughput of 2mppa.