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31 August 2017

Dear Mr Wood

16/02240/FUL - Re: Bagby Airfield

On behalf of Action 4 Refusal ("**A4R**"), in response to the above re-consultation, I attach the following documents:

- An analysis by A4R of the airfield's most recent and updated Voluntary Code of Conduct
- A noise report by Alan Saunders Associates which comments on the work on this issue produced by the Airfield's experts
- A review of the Airfield's business case by an experienced accountant

The Current Application and the 2010 Application compared

1. It may help to put these documents into context. Shorn of the hotel element, at least as far as numbers of flight movements are concerned, this application closely resembles the 2010 application which envisaged some 8,320 flight movements of which 15%, or some 1,200, were to be helicopters. This compares with the current proposal of 9,237 (including flying-in days) of which 878 are helicopters -a number likely to increase substantially as a result of the proposed exception for "emergencies and essential utility movements etc" which are as defined by the airfield itself.

2. As you will recall, in 2010, the planning department officials put forward a number of conditions which it believed were necessary to make the application an acceptable way of regaining planning control that HDC had lost under the stewardship of Mr Cann. As a result of an opinion obtained by A4R from Christopher Lockhart Mummery QC, however, it became clear that the application could not be accepted solely on the basis that "control" would be achieved (allegedly).

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3. The planning department therefore had to support the application on its planning merits. Despite the positive recommendation, the Committee decisively rejected the application for a range of reasons as you will be aware. There is no doubt that the 2010 application was not regarded as being in accordance with the Local Development Framework (LDF) when the decision was taken in September 2010. It is to be noted that the LDF has not changed since then.

The Current Application - a Business Plan and an EIA for the First Time

4. The 2010 application could never have been legally sustained for two reasons. Firstly, (as the Committee pointed out) it did not meet DPD Policy DP25 in that no business plan was produced for a major rural development. Secondly, no EIA exercise was carried out. This was an important legal irregularity. As it happened, these deficiencies were not material to the outcome because of the rejection decision - a decision upheld on appeal. (Inspector Braithwaite)

5. Both the above fundamental deficiencies are no longer present in this application - at least in form. However, in substance, so fundamental are the inadequacies of the airfield's submissions, that the submissions might as well not exist. I would draw you attention to the attached reports for details on these inadequacies, but in this covering letter, I should merely highlight a couple of matters - some of which have only come to light recently.

EIA deficiencies mean no decision on the current application can be taken other than outright rejection

6. The EIA exercise, which, like the planning process itself, is clearly designed to construct a base line against which future impacts might be assessed, has been rendered entirely redundant by the approach adopted by airfield's advisers in the Environment Statement (ES). At paragraph 7.47 in the Noise and Vibration Chapter of the ES, Barton Wilmore say:

    "There are no proposed changes as part of the Development to the current level of aircraft use of the site (1), fleet mix (2) or (3) changes in flight path using the Airfield. Therefore, there could be no noise impacts from aircraft noise in the air associated with the Development." (our numerals)

7. These claims were confirmed explicitly at point 11 in the Barton Wilmore EIA letter of September 1 2016 and therefore must be examined carefully. As far as claim (1) is concerned, the Airfield's <u>own evidence</u> on flight movements submitted both in this application and in the recent enquiries plainly contradicts the claim of no change. It can be seen from the application that the 2016 numbers are well beneath those applied for; therefore a very pronounced intensification of movements is envisaged over historic levels. On the numbers alone, this intensification would amount to a material change of use.

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8. Just in case it might be thought that the choice of 2016 is selective for the purpose of showing that a material change of use will occur if the current application were to be permitted, the airfield records 7309 movements (of which 471 were helicopters) for 2012; 6335 (of which 558 were helicopters) for 2013; 5119 (of which 418 were helicopters) for 2014 and for 2015, 8294(of which 528 were helicopters).It has been accepted in the course of the enquiry before Inspector Lewis that a significant proportion of the movements of aeroplanes (as opposed to helicopters) were accounted for by "touch and go" microlight flights. Those flights had the consequence (if not the intent) of keeping the numbers up - artificially in the view of the residents. If the application were to be granted, doubtless these would be replaced by more remunerative (and noisy) movements.

9. Whatever the position might be in future, it is abundantly clear that the number of helicopter movements applied for is quite unprecedented. It is precisely these movements that cause the most noise and yet the application does not project forward what this material change of use would entail for residents' amenity. Nor is the noise associated with helicopter training and maintenance properly assessed.

10. This deficiency in the ES approach was flagged by Andrew Thompson in HDC's scoping opinion but entirely ignored by the airfield's advisers who have quite simply refused to engage with the issue for reasons which are perfectly obvious- namely that they cannot afford to do so. **It appears to be the Airfield's fond belief that just because there are no controls, there can be no intensification and therefore no material change of use**. This is plainly misconceived for if this were to be the case, no control would ever be possible of material change of use and the whole CLU process would be redundant.

11. It is not just increases of movement numbers that shows material change. The materiality of change is demonstrated qualitatively as well as quantitatively. Thus, as to claim (3) identified above, the flight paths annexed to the application narrow the scope of arrivals/departures to Bagby village and Thirkleby Caravan Park which will concentrate noise levels. This was demonstrated by the noisy circuit display on Bank Holiday Monday afternoon over the Caravan Park. The EIA does not address the implications of this material change in flight paths.

12. As to claim (2), the unfit for purpose Voluntary Code of Conduct at least has the virtue of revealing that the landing of heavy aircraft will take place on what is notoriously a slope with a gradient that is above the CAA's maximum safety recommendations. The abandonment of a previous proposed weight restriction clearly flags the intention to allow large old planes into the airfield for maintenance operations - a clear change in "fleet mix" (see above). The vast increase in areas of hard standing confirm that this development is integral to the business plan.

13. None of the implications of these fundamental changes of fleet mix or flight paths let

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alone movement numbers are addressed by Barton Wilmore in the ES or elsewhere. On the contrary, it is assumed in the application that flight movements are already at the levels applied for; in fact, they are way below such levels according to the airfield's own records (which overstate the numbers anyway for reasons referred to in paragraph 8 above). No lawful planning permission can be granted (or made subject to conditions subsequently) on the basis of the airfield's "magical thinking"; the description of the scheme is wholly insufficient to enable its main effects to be assessed. This is in clear breach of the requirements of Schedule 4 of the EIA regulations 2011.

Health and Safety: ignored in EIA

14. Having totally failed to address noise adequately or at all in the EIA exercise, the airfield does not address the safety considerations required by applicable EIA regulations either. The CAA, in CAP 795 2010, requires all airfields to produce a Safety Management System which must include a risk assessment of all activity with a view to reducing risks to an acceptable level. CAP 795 provides a benchmark of the sort of serious exercise that should have been undertaken to satisfy EIA requirements. It is important that such an exercise be carried out in the light of the fact that the airfield has a slope that exceeds maximum gradient levels recommended by the CAA - a matter that has been commented upon in recent accident reports. Bearing in mind that the airfield is going to admit heavier aircraft for maintenance and that the CAA recommended back in 2010 that safety risk be specifically addressed where training is carried out at unlicensed airfields, a proper safety audit should have been carried out long ago. Naturally the application does not refer to any of these matters though we note that you will be putting these concerns to the airfield before you write your recommendation for the Committee.

15. It is quite clear that the entire purpose of the EIA exercise could not have been as completely subverted and disregarded as it has been here. No reasonable decision approving the application (which has to take the EIA regulations into account) could be reached in such circumstances. The airfield should be invited to go back to the drawing board or risk having its application rejected.

Business Case; pain without any development gain

16. A4R is aware that the airfields expert in the recent enquiry (Toby Lewis) has taken the position that since that one **national** item of guidance on noise postdates **local** policy documents on the subject, these latter documents are somehow "out of date" and can be overridden by a "presumption in favour of sustainable development". For this reason, in this application, the airfield appears content to supply a business case not just because it is required, but because it is helpful to their argument that policy has moved in their favour.

17. In actual fact, HDC's noise policies are not "out of date". The Noise Policy Statement (NPSE) on which the applicant seeks to rely was communicated to LPA's on March 15

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2010 - some six months before the 2010 decision was issued and it can be assumed that it was fully taken into account by Committee in rejecting the 2010 application. Moreover, in a response to an FOI on December 12 2014, DEFRA stated that the "interpretation of the NPSE is at the discretion of local authorities taking into account local circumstances". This statement, which is wholly consistent with the policy underlying the localism initiative, post dates the 2012 NPPF from which Barton Wilmore derive the "presumption in favour of development" on which their application is so heavily dependent. There is in fact nothing to suggest that the policy ground has moved in the airfield's favour since the last rejection of a very similar application in 2010. And Joyce Swithenbank's evidence on noise nuisance is still valid.

18. However misconceived the airfield's self-serving conceptual framework, it pales into insignificance when the actual business case is examined. The development case is simply not made out; there is no gain to compensate for loss of resident's amenity. No amount of glossy photos advertising food (to which the current airfield menu can be adversely compared), can gloss over the fact that from a leisure perspective, the airfield is a hopeless case - as Mr Chapman's evidence makes quite clear.

19. However, what is important, is that the new business case, (which can be deduced from joining up the dots in the application, including the Voluntary Code of Conduct) is not really designed to maintain or enhance a leisure facility. The real agenda is to create a major low rent general aviation maintenance garage and filling station supplemented by flight training businesses including helicopters.

20. Nothing in the LDF comes anywhere near justifying such a material change of use. Even if it were to do so, the development would have to be small scale and sustainable. Unfortunately for the airfield, the major commercial tenant for the enhanced maintenance enterprise, who accounts for 50% of the projected turnover has had his licence suspended by the CAA. The suspension took place as a result of complaints issuing about his work; somehow the work continues but it now has to be signed off by others.

21. Needless to say, Fox's suspension is not mentioned in the airfield business plan. With no obvious successor to Fox's business, it is therefore difficult to see what the future holds from a commercial perspective other than intensively intrusive helicopter training. This produces nothing in the way of local employment (let alone 25 new jobs) and of course will create massive disturbance for residents. The test of sustainability is therefore failed.

22. Nor does the business plan mention the fact that the main employee (the airfield manager Steve Hoyle), has recently been made redundant, as the attached publicity confirms. If the airfield clearly cannot afford to keep on its one major employee, then obviously the massive growth that is indicated in the new departure described in the

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business plan – without any risk assessment either- is unlikely to materialise. DPD policy 25 criteria for small scale proportionate and sustainable rural development would be breached even if the noise and amenity elements in the LDF did not already decisively militate against the application being granted. Moreover, as the attached commentary makes clear, the Voluntary Code of Conduct does absolutely nothing meaningful to mitigate or control noise.

The application must be either withdrawn and re-submitted with a proper EIA exercise and updated business plan - or (preferably) be rejected

23. Looked at simply in isolation as a standalone planning application, without having regard to planning history, the LGO report and all the enquiries, the correct application has no merit and cannot be redeemed by any condition. Even if conditions were to be seriously considered (and A4R does not need to re- iterate all the points made by the various Inspectors on this insuperable problem), the owner is on public record as having adopting a "hectoring tone" towards public officials and resists inspection without prior appointment. There could therefore be no optimism whatever that there would be timely compliance with the terms of any conditions. Indeed, experience would suggest they would be ignored, leaving HDC in the familiar position of an impotent supplicant on behalf of frustrated residents.

24. The application clearly fails all applicable tests to which it is subject - none of which have changed materially since 2010 or at all. This time, officials need to make the only possible recommendations – namely that it either be re- submitted in accordance with the EIA regulations and accompanied by a current (rather than out of date) business case. Better still, to avoid further expense, your department should recommend that the Committee reject the application, for acceptance of this application would be a travesty.

Yours sincerely

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