

**HAMBLETON DISTRICT COUNCIL**

**Report To:** Planning Committee  
15 September 2011

**From:** Head of Regulatory Services

**Subject:** **BAGBY AIRFIELD – PLANNING ENFORCEMENT**

White Horse Ward

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**1.0 PURPOSE:**

1.1 To determine the appropriate enforcement action that should be taken in respect of identified breaches of planning control at Bagby Airfield and the possible engagement of external advice.

**2.0 DECISIONS SOUGHT:**

2.1 To decide whether to serve Planning Enforcement Notices as set out in the schedule at Annex 1, source external legal advice and to decide whether to undertake negotiations with the owner.

**3.0 BACKGROUND:**

3.1 In 2010 a Planning application was made for the comprehensive redevelopment of the airfield. The application was refused planning permission. A subsequent appeal by means of a Public Inquiry was held during March and a day in May 2011. This considered four appeals relating to the comprehensive scheme, two further applications for works and also in respect of the enforcement notice.

3.2 The Planning Inspector's decision rejected the planning proposals but allowed the enforcement appeal. This decision prevents the redevelopment proposals. (A copy of the Inspector's decision is appended to this report at Annex 2 and is available on the Council's website together with the other appeal documentation.) Although most of the physical works at the airfield are lawful there remains a number of issues relating to the authorised use of the airfield and some of the physical works.

3.3 Meetings have recently been held with representatives of Bagby Parish Council, Thirkleby Parish Council and Action4Refusal and with the landowner, Mr M Scott.

**Current Legal Position**

3.4 The main airfield use is established in planning terms through use for more than 10 years. It is not based on a planning permission. There is no valid planning permission with conditions that can be enforced. The key question is what the extent of the established lawful use is.

3.5 The Inspector considered the lawful use though then unhelpfully said that his own views should not be relied on in future proceedings. However, his conclusions concur with those of the Council prior to the Inquiry. It is clear that there has been use of the land as an airfield for more than 10 years. There are however doubts about the extent of the use and the type of aircraft movements. The Inspector concluded that no evidence that he had heard was conclusive. In his opinion, the best evidence produced was that from the airfield

which estimated around 4800 Air Traffic Movements (ATM's) a year. Should that view be accepted then the lawful use of the land is as an airfield with around 4800 ATM's a year. Action4Refusal and the Parish Council's challenge this assertion and consider that the lawful number of flights is much lower.

- 3.6 The Council understands that the airfield operator is now keeping records of ATM's. If the current activity demonstrates flight numbers significantly higher than the "authorised" number then the Council may be able to take some action.
- 3.7 There remains a number of outstanding potential enforcement issues which are listed in Annex 1 to this report. These relate to some physical works (eg. "Hangar A") and various uses of land (the North/South runway, various "commercial" uses etc).

#### **4.0 CONTACT WITH LOCAL PEOPLE AND THE OWNER:**

4.1 The meetings with Parish Council representatives and Action4Refusal have reconfirmed their strongly held view that enforcement action should be taken in respect of the main airfield use to limit air movements and against a number of other elements of the airfield operation particularly "commercial" uses.

4.2 The owner of the Airfield, Mr M Scott, has offered to enter in to a Planning Obligation under Section 106 of the Planning Act to voluntarily control some of the activities at the airfield. On 14 August 2011 Mr Scott wrote,

"Having considered the position I can confirm that the airfield is prepared to stand by the restrictions earlier proposed as referred to in the attached correspondence. In terms of the main cause of the complaints this would restrict helicopter movements to 10 per day (excluding Yorkshire Air Ambulance) and Aerobatics to a three mile exclusion zone.

A formal agreement in these terms has I understand already been drawn up and if implemented will be legally enforceable. Whilst I do not have the planning sought as a voluntary step to assist the council in managing the airfield I would be willing to enter into the same in the hope it would promote better relations as between the airfield and the local community."

4.3 In the correspondence he also states that he considers the North South runway to have been in use for more than 10 years and that the commercial operations been ongoing at the airfield for well over 10 years including air taxi services, training, power line inspections and almost every other form of aerial activity which you can imagine would be associated with this type of airfield. He states that, "These activities are covered in the statements which have already been provided in relation to the planning Appeal and to the best of my knowledge these facts have never been disputed."

4.4 The 'offer' to seek agreement on a voluntary list of conditions was tabled to a meeting of the representatives of Bagby and Thirkleby Parish Councils and Action4Refusal on 6 September 2011. Representatives did not support the offer as it contains conditions setting out flight numbers with which they could not agree. They would be pleased to see the voluntary restrictions put in place, particularly those relating to flight routing, Aircraft Exclusion Area, no Hot Refuelling, no helicopter hover practice and no aerobatics within 2 nautical miles.

#### **5.0 DECISIONS SOUGHT:**

5.1 The options available to the Council are wide ranging. The enforcement of planning controls is a discretionary function such that even if a breach of planning control is identified the Council is not obliged to take enforcement action.

- 5.2 It is important that the issues are considered, and the appropriate decision made in each circumstance. During the 2011 Appeal Inquiry an undertaking was given to the community that these matters would be brought to the Planning Committee and not determined on a delegated basis.
- 5.3 There are options available in respect of each breach or alleged breach of planning control. These are first to: “Do nothing”, noting that there is a breach but that it is not in the public interest or “expedient” to pursue the breach. The reasons why it may not be “expedient” or in the public interest may be varied.
- 5.4 The second option may be that there may be a breach apparent but with insufficient evidence available to reasonably issue an Enforcement Notice. The case may be worthy of further investigation so that additional evidence may be found which could then justify the issue of an Enforcement Notice. In some of these instances additional advice of Counsel may be appropriate to advise on the legal argument for taking action. Costs will arise to the Council where the employment of Counsel or other external staff is required.
- 5.5 The third option is where the evidence exists, and it is “expedient” or in the public interest to do so, to issue an Enforcement Notice.
- 5.6 The schedule at Annex 1 identifies the outstanding enforcement issues the current known position and potential action. The Committee need to determine what action to take in respect of each issue and whether any case should be prioritised over other planning enforcement cases.
- 5.7 The owner Mr Scott has entered in to discussions with the Council to voluntarily control the activity at the Airfield. Such voluntary control may achieve the same or similar outcomes as the service of Enforcement Notices, provided the voluntary action is legally enforceable in a Section 106 Agreement (Planning Obligation) the voluntary action could produce quicker control for the local community and at less risk to the Council.
- 5.8 A summary of the conditions put forward by Mr Scott on 7 September 2011 revised from those previously submitted to the Council and discussed with the Parish Councils and Actio4Refusal is set out below (the numbers relate to the number ascribed to the condition during discussions at the Inquiry) and the Committee needs to decide whether it wishes officers to pursue an Agreement.

	<b>Short Description</b>
18	Aircraft exclusion area
21	Fly-in days
22	Limit on number of aircraft movements up to 80 per day (number per month to be identified through negotiation if required)
23	Limit on number of aircraft movements per annum (5400)
24	Limit of 10 movements per week on runway15/33 (except in emergency)
25	Repair, service and maintenance in specified hangars only (hangars need to be specified)
26	Movements during 0700 to 2130 only
27	Maximum of 10 helicopter movements per day (excluding Air Ambulance)
30	No hot refuelling (except in emergency YAA, power line inspection/repair teams and police)
31	No jet propelled aeroplane movements
34	Log of movements prepared by the airfield
35	No movements of aircraft over 5,730kg (Maximum Take Off Mass)
36	No helicopter hover practice
37	No aerobatics within 2 nautical miles of the airfield

39	No more than 3 helicopters to be permanently based at the Airfield (except for YAA)
48	No fly-in days at an interval of less than 1 month
S106 a	Establish a Joint Consultative Committee
S106 b	Define a code of conduct

5.9 Other conditions were discussed but not agreed by the close of the Inquiry but remain as a matter for negotiation with the owner.

47	Approach and departure routing This was discussed but was not agreed by the end of the Inquiry now agreed that this should form part of the work of the Joint Consultative Committee.
48	A staff member on duty at all times that the airfield is operational. This was discussed but was not agreed by the end of the Inquiry and may form part of the work of the Joint Consultative Committee. Currently unaffordable but condition would be agreed if included "or a suitable authorised club member".
49	No more than 3 take-offs and 3 landings per day of aerobatic or stunt aircraft. This was discussed at the Inquiry but could not be agreed. Other limitation to minimise the impact on the local community from the aerobatic flights are offered as noted at 37 above and an offer of dialogue remains on this point and in respect of flight numbers at 22 above.

5.10 A Second Schedule in Annex 1 reports concerns of the local people to which regulatory control exists outside of the scope of the Local Planning Authority and signposts the regulatory organisations which may be able to provide control.

## 6.0 **RISK ASSESSMENT**

### 6.1 **Risk in undertaking investigation and the undertaking of enforcement action(s)**

<b>Risk</b>	<b>Implication</b>	<b>Preventative action</b>
Cost of preparing the evidence becomes excessive	Significant financial cost to the Council. Council unable to balance budgets	Only commit to serving an Enforcement Notice where the evidence is accessible without disproportionate cost to the potential benefits that may be achieved successful action.
Award of costs on appeal if the appeal is found to be 'unreasonable'	Significant financial cost to the Council.	Only serve an Enforcement Notice where the evidence passes the legal tests

### 6.2 **Risk in not undertaking investigation or enforcement action(s)**

<b>Risk</b>	<b>Implication</b>	<b>Preventative action</b>
Airfield continues to operate in an unrestricted manner	Harm continues to be caused to the residential population and some business interests in the vicinity of the Airfield	Entering in to constructive discussions with the Airfield owner and management in respect of the complaints



**First Schedule - Enforcement Cases for decision**

**Bagby Airfield Planning Enforcement**

**Annex 1**

Reference	Description	Notice Type	Commentary on current position/issues to be resolved	Resources required and source	Committee resolution (Do nothing, Investigate, Serve Notice) Priority over other enforcement cases (Y/N)
1	Flight numbers	Enforcement	<p>i. Identifying the number of aircraft movements at the airfield with regard to fixing a limit to the number of movements requires evidence of the use over a continuous 10 year period.</p> <p>ii. Capture data to enable understanding of whether the current use represents a change of use by intensification from the previous use which may be defined by assessment of the available statistics.</p>	<p>i. Employment of a statistician (with project brief checked by Counsel) to analyse the available evidence. Such assessment to attempt to define the total number of aircraft using the airfield on an annual, seasonal, monthly, weekly or daily basis. (Cost estimate £5000)</p> <p>ii. Commission independent monitoring of the current aircraft movements. (Cost estimate staff and hardware costs £25,000)</p>	<p>i.</p> <p>ii.</p>
2	Is the North South Runway lawful	Enforcement	<p>The extent of the runway use is noted to have changed. Two areas of investigation</p>		

				<p>i. the main length of the north south runway (the seasonal use and subsequent continuous use taken separately or together may have been used for more than 10 years and therefore make the main element of the runway immune from enforcement action)</p> <p>ii. the northern most “extension” of the north south runway has clearly been used for less than 10 years.</p>	<p>i. Additional investigation on going. Resourced by Hambleton DC staff. (cost staff time)</p> <p>ii. Preparation of Enforcement Notice (cost staff time)</p>	<p>i.</p>
3	09/00124/JDC	Side extension to Hangar A	Enforcement	<p>Hangar A approved in 2006 was built with a side extension that is 4.3m wide and 10m long, for which no planning permission was granted.</p>	Preparation of Enforcement Notice (cost staff time)	
4	09/00123/COU	Siting of a caravan	Enforcement	<p>A caravan is sited adjacent to Hangar B. Not occupied currently for permanent residential purposes. A caravan of similar detail has been on the site previously used for pilot briefing and occasional overnight use by</p>	Preparation of Enforcement Notice (cost staff time)	

5	09/00123/COU	Septic tank	Enforcement	pilots. A septic tank formed to serve the residential catavan	Preparation of Enforcement Notice (cost staff time)	
6		Toilet block and packaged treatment works	Enforcement	To serve the Air Ambulance facility	Preparation of Enforcement Notice (cost staff time)	
7		Flight crew mess room	Enforcement	A mess room used for the crew of the Air Ambulance, treated at the time of the Inquiry as an ancillary structure	Investigation of the use and legal opinion (from Counsel) leading to a determination of whether the use can be controlled (cost up to £5000 for items 7 – 13)	
8		Operation of the Air Ambulance	Enforcement	The use of the airfield as an operational base for the Air Ambulance is a material change of use	Investigation of the use and legal opinion (from Counsel) leading to a determination of whether the use can be controlled (cost included in cost of 7 above)	
9	09/00127/COU	Air Taxi	Enforcement	Use of the airfield as a place to operate an "Air Taxi" facility. No evidence of "air taxi" business based at the Airfield, but evidence of aircraft using the Airfield for at least 10 years.	Investigate the extent of the use and whether the use has been undertaken for a continuous period in excess of 10 years and legal opinion (from Counsel) leading to a determination of whether the use can be controlled (cost included in cost of 7 above)	
10	09/00128/COU	Helicopter Flight training	Enforcement	Use of the airfield as a place to operate flight training (especially helicopters). There appears to have been some training using fixed wing aircraft for more than	Investigate the extent of the use and whether the use has been undertaken for a continuous period in excess of 10 years and legal opinion	



				10 years, but limited helicopter training.		(from Counsel) leading to a determination of whether the use can be controlled (cost included in cost of 7 above)	
11		Fly-in Days	Enforcement	Identify the number of fly-in days during which greater numbers of aircraft visit the airfield		Data would be expected to become available from the analysis of the data by a statistician and from any available Bagby Aero Club records. (cost staff time)	
12		Hire of aircraft	Enforcement	Some hire of aircraft by owners appear to have continued for more than 10 years.		Investigate the extent of the use(s) and whether the use(s) has been undertaken for a continuous period in excess of 10 years and legal opinion (from Counsel) leading to a determination of whether the use can be controlled. (cost included in cost of 7 above)	
13		Repair, service and maintenance of aircraft	Enforcement	Some repair, service and maintenance have continued for more than 10 years and could also be seen as ancillary to the main airfield use.		Investigate whether the more recent changes in the repair, service and maintenance facilities have altered the nature and extent of the airfield use sufficiently to require planning permission and allow enforcement action. (cost included in cost of 7 above)	
14	09/00127/COU	Planning Contravention Notice return	Court action	The Planning Contravention Notice in respect of the operation of an Air Taxi operation stated no		Consider prosecution as it is offence knowingly or recklessly to give information,	

		contradicted by later evidence of witnesses		Air Taxi service was known to have been provided whereas evidence submitted has shown this not to be the case	in response to this notice, which is false or misleading in a material particular. The maximum penalty on conviction of this offence is a fine of £5,000.	
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Additional advocacy costs associated with pursuing Enforcement Cases at appeal are estimated to be about £10,000.

**Bagby Airfield Planning Enforcement  
Second Schedule - Concerns raised that are not capable of direct control by the Local Planning Authority**

**Annex 1**

	Other matters	Commentary on the issue	Resources required and source
1	Low flying	Aircraft are reported as flying below the 500' height restriction over residents properties	Referral to the Civil Aviation Authority – Aviation and Regulation Enforcement
2	Noisy aircraft	Aircraft are noisy flown overhead (and sometimes at low level) causing noise nuisance	Environmental health law has no control over airborne aircraft
3	Dangerous flying activity	Aircraft undertaking aerobatic routines or flying low and close to buildings	Referral to the Civil Aviation Authority – Aviation and Regulation Enforcement
4	Movements when the Control Tower is not manned	Aircraft movements are reported to take place at times when the Control Tower is not manned and that telephone enquiries to the airfield go unanswered.	Referral to the Civil Aviation Authority Central Regional Manager, Air Traffic Standards at Manchester
5	Movements during the hours of darkness	Aircraft arrive and depart early and late in the dark raising safety concerns. (May be coupled with noise and control tower not manned.)	Referral to the Civil Aviation Authority – Aviation and Regulation Enforcement
6	Fuel safety	Concern that fuel is dispensed in unsafe conditions without risk assessment by the Airfield	Referral to the NYCC Trading Standards Petroleum Licensing Officer. Some of the issues would be addressed if the practice of hot refuelling was banned
7	Fare paying passengers	Allegation that public transport is being provided from the airfield	Referral to the Civil Aviation Authority – Aviation and Regulation Enforcement.
8	Airfield Security	Concern that the airfield is active late at night when it is unmanned and that with a locked gate would delay an emergency response.	Referral to the Police and Airfield operator to reinforce procedures and potentially scrutinised by the Joint Consultative Committee (JCC).
9	Reliability of aircraft log	Concern that a manual system operated by the airfield will not accurately record flight information as the staffing levels will not enable all information to be recorded	Referral to the Airfield operator to reinforce procedures and potentially scrutinised by the Joint Consultative Committee (JCC).
10	Highway	Low flying aircraft over the A19 and Bagby	Referral to the Highway Authority who advise that signage could be

	safety	Lane creates a hazard to highway users	introduced. If provided at the airfield owners expense could be introduced sooner than if waiting funding by the Highway Authority.
11	PPR not always sought	Prior permission requests to land increases the safety but in-flight PPR requires manning at the Airfield	Referral to the Airfield operator to reinforce procedures and potentially scrutinised by the Joint Consultative Committee (JCC).
12	Business rates	Concern that some businesses at the airfield may not be paying business rates	Referral to the Valuation Office



## Appeal Decisions

Inquiry held on 15-18 March and 13 May April 2011

Accompanied site visit made on 22 March 2011 and unaccompanied site visits made on 26 March and 10 April 2011

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 28 June 2011**

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### **Planning Appeal A Ref: APP/G2713/A/10/2136646**

#### **The Airfield, Bagby, Thirsk YO7 2PH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Martin Scott against the decision of Hambleton District Council.
  - The application Ref 10/01272/FUL, dated 17 May 2010, was refused by notice dated 3 September 2010.
  - The development proposed is airfield clubhouse with three bedrooms, new/extended hangers with concrete aprons, new workshop/maintenance hanger, artificial matting on main runway, relocated fuel line, access and car parking.
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### **Planning Appeal B Ref: APP/G2713/A/10/2123181**

#### **The Airfield, Bagby, Thirsk YO7 2PH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Martin Scott against the decision of Hambleton District Council.
  - The application Ref 09/04039/FUL, dated 4 December 2009, was refused by notice dated 10 February 2010
  - The development proposed is replacement helicopter landing pad and jet fuel stop facility.
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### **Planning Appeal C Ref: APP/G2713/A/10/2123183**

#### **The Airfield, Bagby, Thirsk YO7 2PH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Martin Scott against the decision of Hambleton District Council.
  - The application Ref 09/03959/FUL, dated 24 November 2009, was refused by notice dated 9 February 2010.
  - The development proposed is provision of geo-textile matting to east-west runway and concrete apron to hanger A.
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### **Enforcement Appeal D Ref: APP/G2713/C/09/2114975**

#### **The Airfield, Bagby, Thirsk YO7 2PH**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Martin Scott against an enforcement notice issued by

Hambleton District Council.

- The Council's reference is 09/00122/ENGOP.
  - The notice was issued on 28 September 2009.
  - The breach of planning control as alleged in the notice is (1) unauthorised operational development comprising the construction of the aircraft hanger E; (2) unauthorised operational development comprising the concreting of the apron to aircraft hanger E; (3) unauthorised operational development comprising the concreting of the apron to aircraft hanger A; (4) unauthorised operational development comprising the concreting of part of the main east west runway; (5) unauthorised engineering works/operational development comprising the installation of plastic geo-textile matting on the main east west runway.
  - The requirements of the notice are (1) remove the unauthorised aircraft hanger E; (2) remove the unauthorised concrete aprons; (3) remove the unauthorised concrete from the main east west runway; (4) remove the unauthorised geo-textile matting from the main east west runway.
  - The period for compliance with the requirements is three months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the required fees for breaches of planning control (3) and (5) have not been paid the ground (a) appeal in relation to these breaches does not fall to be considered.
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## Decisions

Planning Appeal A Ref: APP/G2713/A/10/2136646

1. The appeal is dismissed.

Planning Appeal B Ref: APP/G2713/A/10/2123181

2. The appeal is dismissed.

Planning Appeal C Ref: APP/G2713/A/10/2123183

3. The appeal is allowed and planning permission is granted for the provision of geo-textile matting to east-west runway and concrete apron to hanger A at The Airfield, Bagby, Thirsk in accordance with the terms of the application, Ref 09/03959/FUL dated 24 November 2009, subject to the following condition:

1. No additional matting shall be installed on the east-west runway and the concrete apron to hanger A shall not be extended without the prior written approval of the local planning authority.

Enforcement Appeal D Ref: APP/G2713/C/09/2114975

4. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the construction of aircraft hanger E, the concreting of the apron to aircraft hanger E and the concreting of part of the main east-west runway on land at The Airfield, Bagby, Thirsk as referred to in the notice subject to the following conditions:

1. No additional concrete shall be installed on the east-west runway and the concrete apron to hanger E shall not be extended without the prior written approval of the local planning authority.
2. No lighting or additional lighting shall be installed on hanger E without the prior written approval of the local planning authority.

## Reasons

### Bagby Airfield

5. Bagby Airfield is about 17.6 hectares in area and lies to the south of the village of Bagby and to the north-west of the village of Thirkleby, which comprises Great Thirkleby and Little Thirkleby. Access into the airfield is off Bagby Lane and passes between two residential properties at the west end of Bagby. The access track leads to a parking area close to a group of buildings that include a clubhouse for the aero club, an air traffic control tower and refuelling point, and hangerage for the storage, repair and maintenance of planes. Beyond this first group of buildings is the main runway (runway 06/24) which slopes down very gradually from the north-east to the south-west and which is crossed, to the west of the group of buildings, by the generally flat secondary runway (runway 15/33).

6. On the opposite side of the main runway to the first group of buildings is a second group of buildings that comprise five hangers of varying sizes – hangers A, B, C, D and E. Also in this location is, amongst other things, a helipad and associated fuel tank, and a portakabin that is a base for the Yorkshire Air Ambulance (YAA). In front of hangers A, B, D and E are concrete aprons and the helipad is an area of geotextile matting. The main runway between the two groups of buildings has been concreted and either side of this concrete area the grass runway has been overlaid with geotextile matting. The two areas of runway matting total about 7000 square metres. The airfield extends up to Bagby Lane to the south-west of the village and is surrounded by farmland.

7. Bagby Airfield is an aerodrome, as defined in Article 1 of the Town and Country (General Permitted Development) Order 1995 (the GPDO), because it meets two of the tests in the GPDO. Bagby Airfield will be referred to as an airfield, rather than an aerodrome, for the purposes of this decision. Bagby is a small airfield for General Aviation and caters mostly for recreational flying, for residents of and visitors to the area, and for continuity and aerobatic training. Business flights for pipeline and cable inspections are also flown from the airfield which is a sub-base for YAA.

### Planning History

8. Bagby Airfield has a long and complex planning history that includes the submission of many planning applications some of which were refused and some of which were granted. The first planning permission was granted in 1973 to Mr J Whiting for the construction of a light aircraft hanger and the use of the grass runway for light aircraft, and in 1976 a similar permission was granted for use of the runway solely by Mr Whiting and Mr Lassey. In 1980 permission was granted for an increase in the use of the existing grass airstrip for private flying but was restricted to be for the benefit of Mr Lassey only and on termination of his occupancy of the land the permission would cease to have effect. Another condition of the permission restricted movements to 40 take-offs and 40 landings per week. In 1986 permission was granted for the retention of five hangers but this was subject to the condition that, again, they were for use only by Mr Lassey and that on termination of his occupancy of the land the buildings would be removed and the use would cease.

9. Also in 1986 permission was granted for the siting of a portakabin for use as an office/aircraft control facility/toilet/restroom but again this was conditioned to be for the benefit of Mr Lassey only. An appeal against the personal occupancy

condition attached to the first of the 1986 permissions was allowed in the following year. Subsequently planning permission was granted for a further hanger, for an underground fuel storage tank and fuel pump, and for the construction of a building for the storage of light aircraft. In 1995 planning permission was granted for an agricultural pig building, in 1998 permission was granted for an extension to this building, and in 2005 permission was granted for the change of use of the agricultural pig building to an aircraft hanger. In 2009 an application for the construction of a replacement clubhouse with leisure facilities and hotel accommodation and, amongst other things, the construction of a workshop and six hangers, was refused by the Council.

The current planning situation

10. There is general agreement that at this time there are, at Bagby Airfield, buildings not requiring planning permission (the YAA portakabin), buildings with planning permission, buildings and operational development without planning permission but immune from enforcement action, buildings and operational development without planning permission that are the subject of enforcement action (the subjects of Appeal D), and a building without planning permission but not subject to enforcement action (hanger A). There is also general agreement between the main parties that there has been a continuous use of the site as an airfield for more than ten years and that, therefore, the airfield use is immune from enforcement action. The main parties do not agree, however, on the level of air traffic movement that is lawful. The Rule 6 Party at the Inquiry, Action 4 Refusal (A4R), maintain that a condition imposed on the 1980 personal permission is still in effect and that use of the airfield is thus restricted to 80 ATMs per week.

The Development Plan

11. The Development Plan includes the Core Strategy (CS) and Development Policies (DP) Development Plan Documents of the Council's Local Development Framework (LDF).

12. CS policy CP1 states that development that would significantly harm the environment will not be permitted, and that proposals will be supported if they protect, amongst other things, the health, economic and social well-being and amenity of the population, the vitality of the area, and the character and quality of local landscapes and the wider countryside. CS policy CP2 seeks to minimise the need to travel and CS policy CP4 states that development in the countryside will only be supported when an exceptional case can be made for the proposal in terms of policies CP1 and CP2 and where it is for one of six specified purposes.

13. DP policy DP1 states that all development proposals must adequately protect amenity, particularly with regard to, amongst other things, noise and disturbance. DP policy DP30 states that the openness, intrinsic character and quality of the District's landscape will be respected and that the design of buildings will need to take full account of the nature and distinctive qualities of the local landscape. DP policy DP25 provides that employment development in the countryside will be supported if, amongst other things, it is small in scale and is supported by an appropriate business case which demonstrates that support will be provided to the local economy.



### **The ground (c) appeal in Enforcement Appeal D**

14. The ground (c) appeal relates only the fifth alleged breach of planning control; unauthorised engineering works/operational development comprising the installation of plastic geo-textile matting on the main east west runway.

15. The Appellant maintains that the laying of the matting does not constitute an engineering operation. The Appellant has mentioned that this type of matting has been laid at many other airfields around the country and that in no case has this required the grant of planning permission. No information has been provided of these other matting installations and the ground (c) appeal must therefore be determined on the facts of this case. Furthermore, the matter mentioned by the Appellant may simply indicate that no local planning authority has ever sought to take enforcement action against possibly unauthorised development.

16. The matting covers a considerable area, about seven tenths of a hectare, and will have required many lorry movements to bring it to the airfield. It is simple to lay over the grass, in relatively small interlocking sections, and will not have been laid all at once. Nevertheless, the operation to lay the matting did require the hire of casual labour and required the hire of mechanical equipment to compact the matting into the grassed surface. The hire of labour and equipment and the significant scale of the work carried out indicate that the installation of geotextile matting on the main runway at Bagby Airfield constituted an engineering operation. Such an operation, under section 55 of the Town and Country Planning Act 1990 (the Act), is development, for which planning permission has not been granted. The ground (c) appeal thus fails.

### **Planning Appeal C**

17. The main issue is whether the provision of geo-textile matting to the east-west runway and a concrete apron to hanger A have resulted in an increase in the number of aircraft traffic movements (ATMs) at the airfield and therefore greater disturbance for residents of dwellings in nearby villages and the surrounding area.

18. The provision of a concrete apron in front of a hanger is understandable and has several practical advantages. For instance, it provides firm and clean ground for the pilot and passengers to climb in and out of an aircraft and makes it easier to manoeuvre airplanes into or out of the hanger. The concrete apron in front of hanger A has practical purposes and has not resulted in an increase in the number of light aircraft stationed at the airfield. The concrete apron has not therefore resulted in any increase in the number of ATMs at the airfield or in any increase in noise and disturbance at dwellings in nearby villages and the surrounding area. The concrete apron does not conflict with LDF policies CP1, CP2, CP4 and DP1.

19. The geotextile matting on the main runway has stabilised the grass surface and uncontested evidence indicates that it has improved safety by enhancing the take off and braking performance of airplanes. In wet weather conditions the shorter take offs and landings, and thus taxiing times, will minimise noise. During summer months the matting is unlikely to result in any greater number of air traffic movements but in winter months when periods of wet weather might render a grass strip unusable, airplanes will still be able to take off and land. The matting is likely to have resulted in an increase in ATMs during winter months though the increase is not likely to be significant. Furthermore, ATMs are consistently fewer in winter than in summer and it is during winter months that air traffic noise from the airfield will be less disturbing because residents of the surrounding area are likely

to be indoors with windows shut against inclement weather. The reinforcement of the main runway with geotextile matting is likely to have resulted in an increase in the number of ATMs at the airfield during winter months but this is unlikely to have resulted in a significant increase in noise and disturbance at dwellings in nearby villages and the surrounding area. The installation of matting on the main runway does not conflict with LDF policies CP1, CP2, CP4 and DP1.

#### Conditions

20. For the avoidance of doubt a condition has been imposed that prevents the installation of any further matting and the extension of the concrete apron without the prior approval of the local planning authority. This condition is necessary to ensure that these developments as permitted are not extended without the prior written approval of the local planning authority.

### **The ground (a) appeal in Enforcement Appeal D**

21. The ground (a) appeal relates only to the first, second and fourth breaches of planning control; the construction of aircraft hanger E, the concreting of the apron to aircraft hanger E, and the concreting of part of the main east west runway. The main issue is whether the unauthorised developments have resulted in an increase in the number of aircraft traffic movements (ATMs) at the airfield and therefore greater disturbance for residents of dwellings in nearby villages and the surrounding area.

22. Little has been written specifically about the enforcement appeal and little was said on this appeal at the Inquiry. Instead, the cases made on the main planning appeal have been said to apply to the enforcement appeal. Specific regard will therefore be made, in particular, to the Council's reasons for issuing the enforcement notice as stated on the notice itself.

23. Aircraft hanger E is about 300 square metres and can accommodate about three light aircraft. Demand for hangerage at airfields is increasing as a result of insurance requirements and the greater sophistication of modern aircraft. Nevertheless, only some of the 39 aircraft stationed at the airfield are parked in hangers and it is unlikely that the construction of the hanger has resulted in an increase in the number of light aircraft stationed at the airfield. Hanger E has not, in itself, resulted in an increase in the number of light aircraft stationed at the airfield. The construction of the hanger has not therefore resulted in any increase in the number of ATMs at the airfield or in any increase in noise and disturbance at dwellings in nearby villages and the surrounding area. The hanger does not conflict with LDF policies CP1, CP2, CP4 and DP1 or, given that it has no effect on rural employment, with LDF policy DP25.

24. In front of hanger E is a concrete apron of about 150 square metres. The provision of a concrete apron in front of a hanger is understandable and has several practical advantages. For instance, it provides firm and clean ground for the pilot and passengers to climb in and out of an aircraft and makes it easier to manoeuvre airplanes into or out of the hanger. The concrete apron in front of hanger E has practical purposes and has not resulted in an increase in the number of light aircraft stationed at the airfield. The concrete apron has not therefore resulted in any increase in the number of ATMs at the airfield or in any increase in noise and disturbance at dwellings in nearby villages and the surrounding area. The concrete apron does not conflict with LDF policies CP1, CP2, CP4 and DP1.

25. The concreted part of the main runway is at a point where traffic between the two groups of buildings at the airfield crosses the runway. This traffic will include heavy tankers bringing Jet A1 fuel to the refuelling tank alongside the existing helipad. The concreted crossing point of the main runway is also the main point where taxiing aircraft turn on the runway either before or after landing and is at the normal braking point for landing aircraft. The concrete therefore provides a flat surface at a point where traffic, and turning and braking aircraft, would create an uneven unsafe surface even if the otherwise grassed runway were to be overlaid with geotextile matting. The concreted part of the main runway has been introduced, understandably, for safety reasons and has not resulted in an increase in the number of light aircraft stationed at the airfield. The concreted part of the main runway does not conflict with LDF policies CP1, CP2, CP4 and DP1 or, given that it has no effect on rural employment, with LDF policy DP25.

26. The unauthorised developments that are the subjects of the ground (a) appeal have not resulted in any greater disturbance for residents of dwellings in nearby villages and the surrounding area. The ground (a) appeal thus succeeds.

#### Conditions

27. To meet the six tests set out in Circular 11/95, 'The Use of Conditions in Planning Permissions', conditions must be necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects. Many conditions have been put forward for consideration for the main planning appeal. The Council has suggested that some of these should be imposed on the planning permission granted if the ground (a) appeal was to be allowed. However, most of these are either not necessary or are not relevant to the developments for which planning permission has been granted.

28. For instance, conditions preventing the hot refuelling of helicopters and the use of the airfield by jet aircraft are clearly not relevant to the permitted developments. Conditions that seek to restrict the number of air traffic movements and the hours of use of the airfield are also not relevant for the developments hereby permitted do not significantly affect the number of aircraft movements or the hours of use of the airfield. A condition that seeks to prevent the extension of the concrete apron and the concrete on the runway without the prior approval of the local planning authority is necessary and relevant. This condition is necessary to ensure that these developments as permitted are not extended without the prior written approval of the local planning authority. One condition suggested by the Council relates to additional external lighting and this meets the six tests but only in relation to hanger E and to prevent light pollution in the countryside.

#### **The ground (f) and (g) appeals in Enforcement Appeal D**

29. The ground (a) appeal in Enforcement Appeal D has been successful in relation to the first, second and fourth breaches of planning control. Planning permission has also been granted for the third and fifth breaches of planning control in Planning Appeal C. The ground (f) and (g) appeals in Enforcement Appeal D do not therefore need to be considered.

## **Planning Appeal A**

30. The main issues are; first, whether the proposed development would result in an increase in the number of ATMs and thus aircraft noise, and whether this would result in greater disturbance for residents of dwellings in nearby villages and the surrounding area; second, whether the proposed development would have a harmful effect on the rural landscape; and third, whether the proposed development would comply with local planning policy that seeks to support the rural economy.

The first issue – noise and disturbance

31. Mr Lassey terminated his occupancy of Bagby Airfield in 1997 and sold his aircraft at that time. Thereafter he had no involvement with the airfield and the planning permission granted to him in 1980 ceased to have effect. If the permission ceased to have effect then the conditions imposed on it also ceased to have effect. The claim by A4R that the use of the airfield is still limited to 80 ATMs per week is therefore incorrect. The Council could have used this figure as a basis for monitoring activity at the airfield but did not do so. After 1997 the continued use of the airfield was unauthorised but, given that it has continued uninterrupted for a period in excess of ten years, has become lawful. In this regard ground activities have been continuous and air traffic movements have fluctuated seasonally and, during any week, are focussed at weekends. These fluctuations in aircraft activity do not affect the conclusion that the use of the airfield is now lawful. What has not been established, however, is the level or extent of use, the number of ATMs, that is lawful. This decision cannot be conclusive on the lawful level of use but it would be the fallback position if planning permission was to be withheld. To establish whether the proposed development would result in greater noise and disturbance it is first necessary to establish whether it would result in a greater number of ATMs.

32. In early 2008 and following a request for information from the Council the Appellant estimated, from a study of the non-compulsory visitors log and from enquiries made of the previous owner, the operator of a maintenance unit and various pilots using the airfield, that the number of ATMs had been reasonably consistent for the previous ten years, that the average number of ATMs over that period was estimated at 204 per week, and that the peak number of ATMs was about 350 per week. Following a further request the Appellant commissioned a report from Mr Pritchett and this resulted in the Bagby Airfield Movements Report of 16 June 2008. Without any recorded data Mr Pritchett based his report on sampling of pilot log books and other data and on the use of reasonable extrapolation techniques. The report concluded that the average number of ATMs was 191 per week and that the peak number of ATMs was 404 per week.

33. Later in 2008 it was decided to carry out a survey of ATMs at the airfield and the survey was undertaken between 7 August and 7 September 2008. Appendix 1 to the report on the survey, a 'Movements Data Daily Summary', indicates that there was a total of 644 ATMs during the survey period and this is repeated in a 'Summary Movements Data' section of the report. But in a 'Survey Results' section it is stated that "The movements log data collected was checked with the video footage collected and adjusted where necessary to provide as accurate a position as possible". So doubt must be cast on the bold statement that "The total number

of movements during the survey was 644 on 31 days". Nevertheless, the report on the survey by Mr Pritchett states that the survey showed an average weekly equivalent of 141 ATMs per week and an equivalent peak week of 173 ATMs.

34. The survey was only for a one month period but has been used together with data from other sources, maintenance unit job books, the visitors' book, aircraft technical logs for 16 of the resident aircraft at the airfield and 15 sets of pilot log books, to assess ATMs for the ten year period 1999-2009. The data indicates a weekly average of about 73 ATMs and a peak weekly figure of about 125 ATMs over the ten year period. Uplifts have been applied resulting from unrecorded resident and visitor movements and the calculated weekly average is raised to about 95 ATMs per week and the peak weekly figure to about 163 ATMs. Alternative uplifts have been applied to the figures arrived from data based on fuel supply and use. These uplifts are based on the assumption that all fuel, whether Avgas or Jet A1, is used to refuel aircraft. Uncontested evidence from local residents indicates that some fuel is taken from the airfield to refuel helicopters at remote locations. Doubt must therefore be cast on these fuel uplifted figures.

35. Raw data figures therefore indicate a ratio of 73/125 ATMs for average/peak weekly figures over the ten year period and a ratio of 95/163 ATMs for uplifted average/peak weekly figures. Evidence clearly indicates that the condition attached to the personal permission of 1980, restricting the number of ATMs to no more than 80 per week, has been consistently exceeded during the ten year period. The Council accepts this, by implication, by concluding that the average annual number of ATMs is about 5800. This figure, as noted in closing for the Appellant, is midway between the uplifted figures put forward by Mr Pritchett, 4940 and 6500. But the latter figure is based on fuel uplifted figures and cannot be relied on. The Council had engaged York Aviation to assist them in assessing activity at Bagby Airfield and it is their conclusions that are the basis for the Council's conclusion on the average annual number of ATMs.

36. Because the number of ATM's per week is seasonal it is necessary to reach a conclusion on peak use as well as average use, in order to properly condition use of the airfield if planning permission was to be granted, because to rely on the latter would preclude continuation of historical seasonal variations. In the final analysis the Appellant has applied a ratio, of average movements to peak movements, to the Council's accepted average annual number of ATMs to arrive at a peak monthly number of ATMs. This ratio is taken from the aforementioned 73/125 and 95/163 average/peak weekly figures and the ratio is 0.585. But these ratios are derived from, amongst other things, the results of the airfield survey in 2008. Furthermore, the uplifts for resident and visitor movements were applied on a percentage basis and the only recorded numbers of ATM's were those taken from the airfield survey.

37. It must be stated that assessments of the historical number of ATMs at Bagby Airfield are based on very little empirical evidence and the evidence that was studied was incomplete, such as pilot and maintenance logs. This might be usual for this type of assessment but I have little confidence in either of the main party's positions on this matter. I would have more confidence if, for instance, a full year monitoring exercise was carried out under controlled and agreed conditions. Local residents did carry out a survey over a year but this was based on visual evidence and is not conclusive. The subject of the lawful extent of the airfield use must have been an issue in the two previous applications for redevelopment of the airfield and Mr Pritchett was instructed to carry out "...an

extensive assessment of movements based on empirical data" in January 2010, about four months before the date of the application that is the subject of this appeal. No further survey to that carried out in August 2008 was undertaken.

38. Many assumptions and extrapolations have been employed by Mr Pritchett. The Council's position is mainly based on a critique of his evidence and gives me no more confidence. However, of all the evidence I find Mr Pritchett's figures based on an uplift of the survey to be the most realistic, 95 ATMs per week on average with a peak week being 163 ATMs, even though he had technical logs of only 16 of the 39 resident aircraft at the airfield, only 15 pilot log books and a non-compulsory visitors' book. It is my view therefore that the fallback position is about 4940 ATMs per year. Using Mr Pritchett's ratio of 0.585 gives a peak month of 703 ATMs but this may or may not be realistic. In terms of a peak day number of ATMs Mr Owen, in closing for the Appellant, commented that 86 ATMs a day have been observed on two occasions. This was extrapolated from observing take-offs at the airfield and is flimsy evidence on which to base a conditioned limit. He also suggested that it is sensible to consider peak daily ATMs to be a third of the peak weekly ATMs. A peak day could therefore be considered to be 55 ATMs. It is worth noting that this was exceeded only once during the month long survey in 2008 but on that day there were, extraordinarily, 31 ATMs by microlights which swelled the daily figure to 79 ATMs; the average per day was about 21 ATMs.

39. I would not expect these conclusions to be given any credence if the lawful use of the airfield was to be the subject of an application, and possibly an appeal against refusal of that application, for a certificate of lawful use. Nor would I expect the conclusions to be referred to in any possible future negotiations on development at Bagby Airfield. They are simply conclusions I must make, on the evidence before me, to assess proposed conditions in this case.

40. Planning Policy Guidance 24 'Planning and Noise' (PPG24) sets out government policy on, amongst other things, noise from aircraft. Annex 3 sets out detailed guidance on the assessment of noise from different sources, one of these being noise from aircraft. For major aerodromes the standard method is to express noise exposure in terms of  $L_{eq}$  but for small aerodromes "...local planning authorities should not rely solely on  $L_{eq}$  where this is based on less than about 30 movements a day. Local planning authorities should also be aware that in some circumstances the public perceive general aircraft noise levels as more disturbing than similar levels around major airports". The Appellant and the Council have suggested that ATMs should be limited to, respectively, 1000 and 750 per month, or 33.3 and 25 ATMs per day. 33.3 is about 30 and given that local residents do clearly perceive aircraft noise to be discrete events no reliance can be placed on an assessment based on  $L_{eq}$  measurements. Furthermore, whilst standards on noise have been referred to that provide methods for an objective assessment of noise, the noise of airplanes and of helicopters has a specific character and is not comparable to any other type of noise. I have thus relied on my own perception and reactions to the noise rather than to the technical evidence.

41. Away from traffic noise on the A19, particularly within the nearby villages and to the north-east of the airfield, the area surrounding the airfield is generally quiet. There are military airfields in the area, planes towing gliders fly over high ground to the east, and the A19 and nearby main east coast railway line are used by pilots as navigation aids, so the quietness of the area is not undisturbed by aircraft noise. However, aircraft noise from these sources is very intermittent and at some distance away so is not particularly disturbing. The airfield is nearby and an

aircraft, once it begins its take-off and whilst it is climbing to its cruising altitude, can be clearly heard. The noise is not loud but it is strident and intrusive. If the plane is circuiting the airfield the noise, albeit at a lower level, continues and rises and falls as power is applied through turns. The noise remains intrusive until the plane is brought into land when it glides towards the runway.

42. Helicopters landing are as noisy as when they are taking off. The noise of a helicopter is clearly heard in the surrounding area from the moment its engine is started until it leaves the vicinity of the airfield and the same noise in reverse is heard when it lands. A condition suggested by the Appellant would limit the number of helicopter ATMs to no more than 10 per day. But 10 of these discrete events, probably in addition to helicopter ATMs of the YAA, adds significantly to noise experienced by local residents from light aircraft. Airplanes performing aerobatics over the airfield are especially noisy and disturbing for local residents.

43. Most flying activity at the airfield is for leisure purposes and is focussed at times, at weekends and during summer months, when residents of the area are also seeking to maximise their leisure time. For a lot of residents this will involve working and relaxing in their gardens. This exposes them to noise from the nearby airfield. In these circumstances the noise of aircraft and helicopters, taking off, landing and circuiting the airfield and at current levels, must be disturbing for local residents. The noise events, furthermore, are not restricted to a particular period on any day but can occur at any time during normal daytime hours. Local residents are not therefore able to organise their time to avoid disturbance by aircraft noise. Noise from aircraft and helicopters will occur at any time and particularly at normal leisure times, will vary and fluctuate in level, will occur directly over Bagby and Thirkleby, and will, given all these factors, cause significant disturbance for residents of these two villages and outlying dwellings.

44. The proposed development includes the construction of a new clubhouse that would include three bedrooms for use by visiting pilots and their passengers. This element of the proposed development would not have been proposed if there was not a likely demand for this type of accommodation. Bagby Airfield is within an attractive part of North Yorkshire and is likely to be a desirable destination for tourist flyers. Additional hangerage would also provide the opportunity for an increase in the number of resident airplanes and an increase in accommodation for airplane servicing would be likely to result in an increase in ATMs associated with this business activity. If the proposed development was to be permitted and implemented there is no doubt that Bagby Airfield would be significantly improved and would be a more attractive tourist destination and home base for leisure flyers.

45. Mr Pritchett has suggested that the proposed development would result in an increase of about 15 ATMs per week. The increase in hangerage proposed would, at current usage levels, provide space for an additional ten light aircraft. On the evidence of Mr Pritchett only six are currently kept outside and these would thus be kept inside with space left over for covered parking of aircraft awaiting maintenance. This suggests that it is proposed that no resident aircraft at the airfield would be kept outside. If six aircraft are currently kept outside at present it is quite possible that this would continue even if the proposed development was to be permitted and implemented. There would be the opportunity for an increase in the number of aircraft resident at the airfield and for a significant increase in ATM's by resident and visitor aircraft. If not limited there would be scope for a significant increase in ATMs at the airfield, in excess of the suggested 15 ATMs per week.

46. Balanced against this potential for an increase in ATMs would be the provisions of a signed and dated Section 106 Unilateral Undertaking (the Undertaking) submitted by the Appellant, and the restrictions imposed by other suggested conditions. Local residents have expressed specific concern about the noise of hot refuelling of helicopters at the airfield and the flying of aerobatic aircraft over the airfield and nearby villages and dwellings. Agreed conditions would prevent the hot refuelling of helicopters and the performance of aerobatics within a two nautical mile radius of the airfield. The second condition would disperse aerobatic flying over a wider area and would not displace the noise and disturbance caused to one other specific area. Other agreed conditions would limit helicopter movements and the use of the airfield as a permanent base for any more than three helicopters.

47. The Undertaking would make three main provisions in the event that planning permission is granted. These would be the creation of a Bagby Aerodrome Joint Consultative Committee (BAJCC), a Bagby Aerodrome Flight Policy (BAFP), and a Bagby Aerodrome Complaints Policy (BACP). The first two of these provisions would require schemes to be submitted to and agreed in writing by the Council within a specified time frame. Representatives for the BAJCC would be drawn from all interested parties and the Council could ensure that no one interest is over represented on the committee. The remit of the BAJCC, and many other matters, would be for the Council to agree with the Appellant. The BAFP would be policies to minimise aircraft noise in the vicinity of the airfield and if a pilot transgresses these policies disciplinary measures are set out in the Undertaking. The main policy would be the establishment of no-fly zones in the vicinity of the airfield and of primary and secondary arrival and departure routes.

48. The Undertaking, which meets tests set out in Circular 05/2005, does include provision for any disputes or differences between the parties to be resolved by an independent solicitor, expert mediator or arbitrator. Nevertheless, before such an event a great deal would need to be studied and approved by the Council who would have to be, in this situation, pro-active rather than reactive. It is safe to state that the Council, who will have known within a few years that Mr Lassey had relinquished his interest in the airfield in 1997, were slow to take action against the subsequent unauthorised use of the airfield. Consideration must therefore be given to local residents' concerns, expressed at the Inquiry, that the Council would not be able, for whatever reason, to properly represent their interests in negotiations with the Appellant on the BAJCC and BFPC. However, A4R, Bagby and Balk Parish Council and Bagby and Balk Village Society are named as interested organisations in the Undertaking and any of these organisations could instigate expert determination in the event that the Council failed to properly and fairly represent their interests in negotiations with the Appellant.

49. If the appeal is dismissed and planning permission is withheld current activity at the airfield is likely to continue without any controls. If the appeal is allowed and planning permission is granted then its conditions and the Undertaking would become effective. For the first time since Mr Lassey relinquished his interest in the airfield, airplane and helicopter activity would be under some control. The level of activity would be dependant upon the limit of ATMs contained in conditions. Other conditions, discussed and agreed in principle at the Inquiry, would ensure the provision of equipment to monitor ATMs, would require a log to be kept of ATMs, would restrict hours of operation of the airfield, would restrict airplanes to those that could be flown by pilots with a Private Pilots Licence, would restrict helicopter training and hovering, would restrict the number of fly in days to three



in any one year, and would introduce no-fly zones and prescribed arrival and departure routes. This last condition was accepted by the Appellant at the Inquiry even though its provisions are in the Undertaking.

50. At the Inquiry local residents expressed some scepticism on the subject of the BAJCC, particularly on how this would be set up and how effective it would be. This factor notwithstanding the Appellant, the owner of the airfield, could initiate all of the three main provisions of the Undertaking irrespective of the outcome of this appeal. He has owned the airfield for several years and must have been aware of local residents' concerns regarding activity at the airfield. Putting the provisions in place before submitting any of the three applications for the redevelopment of the airfield, the third of which is the subject of this appeal, might have alleviated some local concern and might have shown a commitment to being a good neighbour to local residents who are disturbed by aircraft noise. Given the fact that initiation of a BAJCC, a BAFC and a BACP are not dependent on the outcome of the appeal little weight is given to the provisions of the Undertaking. The weight that is given to it is in relation to disciplinary measures that would be brought into effect if a pilot ignores no-fly zones and predetermined routes on take-off and landing.

51. The aforementioned conditions would be a direct consequence of planning permission being granted. The introduction of no-fly zones to the north-west of the airfield over Bagby and to the south-east over Thirkleby would be likely to, with the disciplinary measures of the Undertaking, prevent overflying of the two villages. But the noise of an airplane flying a circuit would still be audible at most dwellings, albeit at a lower level. Furthermore, the noise of the airplane taking off, when it is at its noisiest, would remain the same. The significance of these conditions, however, is diminished by the fact that, like the provisions of the Undertaking, they could be self-imposed and managed. They would, also, do nothing for disturbance at some dwellings that are outside the proposed no-fly zones. The Beeches for instance, on Moor End Lane to the south-west of the airfield, lies directly beneath the proposed primary arrival and departure route.

52. The restriction on hot refuelling of helicopters and on aerobatic flying over the airfield, two particularly noisy activities, would clearly reduce disturbance at nearby dwellings. However, like the no-fly zone condition, the conditions could be self-imposed without the grant of a planning permission. Nevertheless, there would be a guarantee that they would be imposed if this appeal was to be allowed and they therefore carry some weight. Of greatest significance, however, are the conditions that would limit the number of ATMs. If the limits were set at, or slightly above, the fallback level then, with other conditions in place, residents would not experience any greater disturbance from aircraft noise. If, however, the limits were set at a higher level and the potential for an increase in ATMs was realised then local residents could expect to suffer greater disturbance.

53. On the final day of the Inquiry the advocates for the Council, the Appellant and A4R stated their final positions on the limits that should be imposed on the number of ATMs at Bagby Airfield. Setting aside secondary limits for fly in days and for distribution between fixed wing aircraft and helicopters these are, for the Appellant, 1000 per month and 100 per day, for the Council, 477 per month, 110 per week and 16 per day, and for A4R, 84 per week and 12 per day which equates to about 360 per month.

54. The Appellant has not, either before or during the Inquiry, altered his suggested limits and they can, therefore, be considered to be fundamental to the

development for which he is seeking planning permission. Conditions should not be imposed, given the judgement in the case of *Wheatcroft v SSE* [1982] that would result in a substantial alteration to the development for which planning permission is sought. The conclusion reached in this decision on the fallback position, if used to set limits on monthly and daily ATM's, would constitute a substantial alteration to the development for which planning permission is sought. Such a major alteration cannot be considered even though all parties have had opportunities to comment on it.

55. The Council's limit per month extrapolated to a yearly limit would exceed the aforementioned likely fallback position of 4940 ATMs per year but makes no provision for seasonal or weekly variations. In this regard, given seasonal and weekday to weekend variations, the daily limit must be more than a seventh of a weekly limit and more than a thirtieth of a monthly limit, and a weekly limit must be more than about a quarter of a monthly limit. The limits suggested by A4R also fail to make provision for seasonal and weekday to weekend variations. Neither set of limits is realistic and neither set of limits would reflect the historical pattern of ATMs at Bagby Airfield.

56. Mr Owen, in closing for the Appellant and with regard to his suggested limits, stated that "...anything less is likely to involve the removal of existing historical lawful activities". But 1000 ATMs per month is more than 703 ATMs per peak month, the likely fallback position, and would constitute an increase of 40%. 100 ATMs per day is more than 55 ATMs per day, if this was to be considered to be a reasonable estimate of historical peak day activity, and would constitute an increase of 82%. Such increases might not be considered by the Appellant to be significant but if translated into reality would have a significant effect on aircraft activity on, around and above the airfield.

57. The potential increase in aircraft activity that could result if the ATM limits required by the Appellant were to be imposed would not, with regard to the consequent increase in noise and disturbance for local residents, be offset by the restrictions on, amongst other things, hot refuelling of helicopters and aerobatic flying over the airfield. The proposed development, with imposed conditions as required by the Appellant, would result in a significant increase in aircraft noise and would thus have a significant, if not serious, effect on disturbance for residents of dwellings in nearby villages and the surrounding area. The proposal thus conflicts with LDF policies CP1, CP2, CP4 and DP1.

#### The second issue – the rural landscape

58. The proposed redevelopment at Bagby Airfield would include the demolition of the somewhat ramshackle buildings on the north-west side of the runway and their replacement by a mainly single storey clubhouse and a maintenance workshop/hanger of about 800 square metres. On the opposite side of the runway three hangers would be retained and other buildings would be demolished, one of the hangers would be extended and six new hangers would be constructed; five of these would be 300 square metres and one would be 520 square metres. Between the clubhouse and nearby hanger would be a 29 space car park and leading to this would be a new access road (the old access would be closed) from a new junction off Bagby Lane at the south-west end of the village. The access road would pass through a grassland meadow interspersed and bounded by areas of deciduous woodland and including a pond and a marsh with associated habitats.

59. The landscaping either side of the access road off Bagby Lane would be visually attractive, would support biodiversity, would enclose the village at its southern end, and would have a positive effect on the character and appearance of the rural landscape. The clubhouse has been sensitively designed with appropriate reference to historic airport building design and would have significant sustainability credentials. The replacement maintenance workshop/hanger building on this side of the runway, which would be about the same size and scale as the former agricultural building it would replace, would be appropriate in design and materials. The first part of the new access road would be close to one end of a public play/amenity area at the south-west end of the village. Once implemented and established the landscaping works either side of the access road would enhance views from this community amenity area.

60. The airfield can be seen from the A19 to the west but from a car the airfield would be glimpsed at best and would not significantly undermine an appreciation of the landscape. The principal view of the airfield is from the opposite side of the A19 and from a continuation of Bagby Lane up to its junction with Moor End Lane. From this reasonably level vantage point the runways and the buildings of the airfield, which is on ground that rises gradually up to its north-east boundary, are apparent. But the airfield is a lawful use and the runways will, in all probability, remain irrespective of the outcome of this appeal. The replacement buildings to the left of the main runway, from the main vantage point, would be no more obtrusive in the landscape than those they would replace. They would, in fact, given their appropriate design, improve the appearance of the airfield.

61. The main concern expressed, with regard to this issue, is with the form and layout of the proposed group of buildings on the south-east side of the main runway. The main runway is a distinctive linear feature in the landscape particularly in views from the main vantage point. The nine hangers, both existing and proposed, would align with a hedgerow that defines the south-east boundary of the airfield, would be almost exactly in line with the runway and would reflect the linear form of the airfield. A group of farm buildings, such as that at nearby Griffin Farm, are closely grouped around a farmyard for practical purposes. Similarly, a group of hangers at an airfield are likely to align with the main runway for practical access purposes. The layout of the hangers would reflect that of the main runway, would be the same as that of the existing hangers, and would not thus adversely affect the character of the rural landscape.

62. The Council has highlighted the light grey cladding materials of the hangers as a reason for their obtrusiveness in the landscape. The Appellant has committed to re-cladding the retained hangers in the same materials as the hangers approved if the planning appeal was to be allowed and planning permission granted. The group of nine hangers would thus have a cohesive appearance and, furthermore, the prior approval by the local planning authority of materials to be used on the external surfaces of all proposed buildings are the subject of an agreed condition. The proposed redevelopment of Bagby Airfield has been carefully and sensitively designed, both in landscape and building terms, and would not have an adverse effect on the visual amenity of the rural landscape. The proposed development does not thus conflict with DP policy DP30 or, in this regard, with CS policy CP1.

The third issue – the rural economy

63. The significant factor in this issue is that Bagby Airfield is an existing lawful use. Furthermore, it is located outside any settlement and in the countryside for

obvious reasons. The airfield is already run as a business, though no financial information has been submitted as to the viability of the business, and accommodation is leased to two aircraft repair, service and maintenance (RSM) businesses, Graham Fox Engineering and Swift Technology Group.

64. The proposed redevelopment of the airfield would result in a net increase in hangarage of 837 square metres and a net increase in RSM space of 212 square metres. The three bedrooms in the proposed clubhouse building would be solely for the use of pilots and passengers arriving and departing by airplane. A condition to this effect has been agreed by the main parties. Otherwise the clubhouse would be a replacement for current dilapidated accommodation.

65. The Appellant has commented that the proposed development would result in the creation of three full-time jobs and that it must therefore be considered to be small in scale. He has also commented that since DP policy DP25 relates to rural employment and that the creation of jobs is the correct characteristic of the development against which to assess its scale, as opposed to the amount of built development created. The requirement in criterion iv. of the policy, that proposed employment development in the countryside is supported by an appropriate business case, is not dependent on the scale of the development. It is required for all employment development irrespective of its scale. No business case has been prepared or submitted in this case either at application or appeal stage. The proposed development may help to sustain the rural community but there is no information on which to assess this matter.

66. The theme of sustaining the rural economy is also to be found in CP policy CP4. The proposal may well support tourism and is located in the countryside for obvious reasons but criterion i. also requires that it "...will help to support a sustainable rural economy". Again, there is no business case to assess whether the proposal would support a sustainable rural economy. The proposal is for the comprehensive redevelopment of the airfield and it is unlikely that the Appellant is pursuing the scheme without having assessed whether he would be making a sound business investment. Such an assessment could be the basis for a business case so it is surprising that a business case has not been prepared or submitted, particularly as it is a policy requirement for all scales of development. There is no reason to suppose, on the evidence available, that the requirements of CP policies CP1 and CP2 would impede compliance with the requirements of policy CP4.

67. Mr Meek, for the Appellant, has stated that "There is a clear business case in support of the appeal proposals...". But no business case has been submitted to support the proposed redevelopment of Bagby Airfield and to satisfy the requirement of DP policy DP25. It has not been demonstrated that the proposed redevelopment will help to support a sustainable rural economy. The proposal thus conflicts with CS policy CP1 and DP policy DP25.

#### Other matters

68. At the Inquiry a local resident expressed concern that the proposed redevelopment of the airfield would harm the ecology of the area and, in particular, the habitat of some species of birds. Birds that live in the area do so alongside the lawful use of the airfield and the aircraft activity that takes place. It is unlikely that additional activity, even up to the limits suggested by the Appellant, would have a significant impact on the local bird population.

69. Reference has been made to other appeal decisions relating to airfields and General Aviation and to the implementation of Joint Consultative Committees at other airfields. The benefits of a BAJCC have already been mentioned but are not crucial to the overall decision in this case. Furthermore, it is a well established principle that a development proposal must be determined on its individual merits. This important principle has been followed in this case.

70. An Environmental Impact Assessment (EIA) was not submitted at application stage and it was concluded, at The Planning Inspectorate some time before the Inquiry, that none was required to be submitted by the Appellant at appeal stage. It is A4R's case that an EIA is required for the proposed redevelopment of Bagby Airfield, under current UK and European law, and that planning permission could not, therefore, be granted irrespective of the conclusions on the main issues. Planning permission has been withheld and no further comment is necessary in this Decision on this matter.

#### Conclusion

71. The proposed redevelopment of Bagby Airfield would not have a harmful effect on the rural landscape and, in this regard, does not conflict with DP policy DP30. The proposed redevelopment, with imposed conditions as required by the Appellant, could result in a significant increase in aircraft ATMs and noise and could thus have a significant, if not serious, effect on disturbance for residents of dwellings in nearby villages and the surrounding area. The proposal thus conflicts with LDF policies CP1 and DP1. Furthermore, the proposed redevelopment would not comply with LDP policies CP1 and DP25 that seek to support the rural economy. The appeal thus fails and planning permission has been withheld.

#### **Planning Appeal B**

72. The existing access to the airfield will continue to be the only access because planning permission for the proposed redevelopment of Bagby Airfield, including the provision of a new access, has been withheld.

73. The main issues are whether the proposed replacement helicopter landing pad and jet fuel stop facility; first, would result in an increase in helicopter ATMs and therefore an increase in noise and disturbance for residents of dwellings in nearby villages and the surrounding area; and second, would result in an increase in heavy commercial vehicle (HCV) use of the existing access to the detriment of highway safety in Bagby.

#### The first issue – noise and disturbance

74. The condition suggested by the Appellant that would restrict helicopter ATMs to no more ten per day, in addition to those by YAA, would be applicable to this appeal. Though this number of helicopter ATMs was exceeded on two days during the month long survey in 2008 the average number of such movements averaged less than four. The landing pad and jet fuel stop would be relocated to a location separate from other aircraft activity and could become a filling station facility for passing helicopters. It is quite possible that the facility would result in a greater number of helicopter ATMs than at present. Helicopter ATMs are especially noisy and an increase in these events would result in greater disturbance for residents of dwellings in nearby villages and the surrounding area. The proposal thus conflicts with LDF policies CP1 and DP1.

## The second issue – highway safety

75. HCVs already use the existing access, to deliver Avgas and Jet A1 fuel. However, if the relocated landing pad and jet fuel stop would result in a greater number of helicopter ATMs than at present then there would probably be an increase in HCVs for the delivery of Jet A1 fuel. The existing access passes between two residential properties and visibility to the right for drivers of HCVs exiting the access is restricted by the proximity of landscape features close to the edge of the roadway.

76. The potential increase in HCVs has not been quantified and it is unclear whether this would have any adverse consequences for highway safety. It is always best to take a cautious approach when assessing this issue and without any evidence to the contrary it is reasonable to reach a conclusion that the proposed replacement helicopter landing pad and jet fuel stop facility would result in an increase in heavy commercial vehicle use of the existing access to the detriment of highway safety in Bagby. The proposal thus conflicts with CS policy CP1.

## Conclusion

77. The proposed replacement helicopter landing pad and jet fuel stop facility would result in an increase in helicopter ATMs and therefore an increase in noise and disturbance for residents of dwellings in nearby villages and the surrounding area and would result in an increase in heavy commercial vehicle use of the existing access to the detriment of highway safety in Bagby. The appeal thus fails and planning permission has been withheld.

*John Braithwaite*

Inspector



Mr Proud	Local resident
Mr A Tulloch	Local resident
Mr R Chapman	Local resident
Mrs C Chapman	Local resident
Mr Benson	Local resident
Mrs K Brown	Local resident and Secretary of Bagby Village Society
Dr L Thom	Local resident
Mr P Bondar	Local resident
Mr C Auger	Local resident
Ms C Lumb	Local resident
Mr D Van Neck	Local resident
Mr McDill	Local resident
Mr Varey	Local resident
Mrs C Musgrove	Local resident and Vice Chairperson of Bagby and Balk PC
Mr Middleton	Local resident
Mrs A Hornsby	Local resident
Mrs M Ballantyne	Local resident
Mrs S Van Neck	Local resident
Mrs M Flanagan	Local resident
Mrs I Wood	Local resident
Ms C Lumb	Local resident
Mrs R Shield	Local resident
Mr P French	Local resident
Mr T Keel	Local resident
Dr R Wood	Local resident
Mr M Rodger	Local resident
Mr T Brown	Local resident
Mrs J Varey	Local resident and Parish Clerk
Mr A Fyfe	Local resident
Mrs T Linton	Local resident

## **DOCUMENTS**

- 1 List of appearances for the Appellant.
- 2 Opening remarks on behalf of the Appellant.
- 3 Anase: Lessons from 'Unreliable Findings'.
- 4 Appeal Decisions APP/J0405/A/07/2052929 et al.
- 5 Draft Statement of Common Ground.
- 6 Council's letters of notification and list of those notified.
- 7 Draft Section 106 Planning Obligation.
- 8 Opening Statement on behalf of Action 4Refusal.
- 9 Bagby Airfield – Advice Note for David Cooper.
- 10 Aviation conditions travelling draft.
- 11 Existing and proposed flight protocol.
- 12 York Aviation response to Mr P Kember and Mr P Pritchett.
- 13 Chief economist statement on Anase.
- 14 E-mail from David Charles to Alan Saunders dated 15 March 2011.
- 15 Helicopter noise database.
- 16 Statement by Mr P Benson on behalf of Mr And Mrs Harker.
- 17 Statement by Mr R Linton.
- 18 Statement by Mr A Fyfe.
- 19 Character Area 24 Document and Landscape Assessment.



- 20 Draft Flight Protocol.
- 21 Yorkshire Air Ambulance flights from Bagby Airfield April 2010–March 2011.
- 22 LPA's chart of ATM at Bagby airfield from various sources.
- 23 Action4Refusal proposed conditions.
- 24 Mr Pritchett's supplementary submission to Mr Kember's Appendix 11.
- 25 Bagby and Balk Parish Council representation at application stage.
- 26 Application Drawings for the three planning applications.
- 27 Noise contour plan.
- 28 Letter from the Appellant to Mr J A Tulloch dated 4 June 2008.
- 29 Flight figures at Bagby Airfield produced by various witnesses.
- 30 Article from the Stockton and Darlington Times.
- 31 Mr Pritchett's Average Annual Movements Guide Calculation.
- 32 Bagby Airfield Runway Reinforcement Process.
- 33 Aviation Conditions Travelling Draft.
- 34 CAA Safeguarding of Aerodromes Advice Note 3.
- 35 Mrs Linton's written statement.
- 36 Mr Linton's written statement.
- 37 Mrs Ballantine's written statement.
- 38 Mrs Varey's written statement on behalf of Bagby and Balk Parish Council.
- 39 Mr Tomaszewski's written statement.
- 40 Mr Brown's written statements.
- 41 Mr Auger's written statement.
- 42 Beeches No Fly Zone put forward by Mr Auger.
- 43 Mr Chapman's written statement.
- 44 Mr Rodger's written statement.
- 45 Dr Wood's written statement.
- 46 Mr Keel's written statement.
- 47 Photographs of hardcore roadway submitted by Mrs Price.
- 48 Internet Airfield Details for Bagby Airfield.
- 49 Mr French's written statement.
- 50 Mrs Price's written statement.
- 51 Statement by Mr Fox (not presented to the Inquiry).
- 52 Documents referred to by Mr Fife.
- 53 Bird Survey Report for Bagby Airfield dated March 2011.
- 54 Conditions Travelling Draft.
- 55 Extract from Circular 11/95.
- 56 Plan 1 for draft condition 18.
- 57 Section 106 Planning Obligation.
- 58 SAVE v SoS for CLG and Lancaster City Council.
- 59 Closing Submissions on behalf of Action4Refusal.
- 60 Closing Submissions of the LPA.
- 61 Closing Submissions for the Appellant.