



Consultation
Thanet District Council
P O Box 9
Margate
Kent
CT9 1XZ

Your ref: L TDC Manston 120224
Our ref:
Date: 1 March 2012

Dear Sirs

Night-time Flying Policy for Manston Airport PUBLIC CONSULTATION

I am writing in response to the public consultation on behalf of the Thanet District Committee of Protect Kent, being a "Special Interest Group established in Thanet". I believe this qualifies the Committee's eligibility to be included as part of the consultation audience. Contact details for the Committee, including the required postcode, are given at the bottom of this letter.

Protect Kent are opposed to any extension of night-time flying at Manston into the hours between 23:00 and 07:00, and therefore wish to object to the acceptance of the night-flying policy currently submitted by Infratil.

The basis for our objection is that we believe the case for night-flights is unfounded and unproven. We also consider that allowing night flights between 23:00 and 07:00 would have much greater adverse effects than any benefits which might arise from these flights. Furthermore, we believe that contrary to present understanding, the introduction of night flights does require planning permission. Our arguments in support of these statements are presented below.

1. THE CASE AGAINST NIGHT-FLIGHTS

Rather than recap the long and turgid history of Manston, we start with the latest submission of a Night-time Flying Policy by Infratil, dated 27/10/2011, and the subsequent report by Parsons Brinkerhoff Ltd (PB), dated 23/01/2012.

The Kent Branch of the Campaign to Protect Rural England exists to promote the beauty, tranquility and diversity of rural England by encouraging the sustainable use of land and other natural resources in town and country.

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1.1 False Economic Benefits

Much of Infratil's argument for night-time flying is based on the alleged positive impacts on the local economy, particularly the creation of employment. We consider that the evidence provided to support these claims is over-optimistic and not founded on true and accurate information. We fail to accept the need for night-flights, so strongly expressed in Infratil's submission. Please consider the following points:

- The anticipated growth at Manston has not been achieved. Forecasts in Manston's Master Plan (November 2009) have not been met. These forecasts look ahead to 2018, but as PB state " ... no adjustment has been made to the 2018 figure to take into account the downturn seen during 2009 onwards." This is further evidenced by the Government's national forecasts that imply half the annual rate of growth, at between 1.5% and 2.3% per annum, compared to previous forecasts. So all of Infratil's figures for air movements are (or have become) over-optimistic.
- PB state " ... we do not believe that the airport can justify a night flying quota system to support passenger growth." and " ... the argument that a block on night flying would prohibit based aircraft is not supported by the evidence available." This shows that Manston's reasons for night flights are founded on invalid arguments. In fact, there is so much capacity for increased air traffic movements during day-time hours, it is difficult to see why night flights, especially for passenger services, are warranted.
- This is further supported by the withdrawal of Flybe and their scheduled flights to UK destinations. Obviously, there is not the demand for such passenger services to make them financially appealing to operators, even with the full flexibility of day-time hours.
- It is believed that Infratil are actually targeting the freight market to the exclusion of passenger flights, the latter being included in their proposals only to make them more attractive (through the alleged employment they will create). Freight movements do feature in their plans, based on decreases in freight capacity at other major airports in the South East. However, while capacity at Heathrow is likely to fall, "Stansted, and Gatwick to a lesser degree, have significant capacity to accept additional freight volumes." There is no guarantee that night flights will secure a portion of the freight market for Manston.
- Furthermore the experience of 2009, when Thanet District Council rushed through an agreement for night-flights to enable a potential freight operator to transfer from Stansted, clearly demonstrates that enabling night-flights does not automatically lead to an expansion of airport activities. Such a move from Stansted is even less likely, now that BAA has finally lost its Appeal against the Competition Commission ruling that Stansted must be sold.
- Even if Manston were to gain from displacement of traffic from these other airports, a ban on night flying would only exclude Manston " ... from 9% of the scheduled freight market ... " Given that at least four other airports (in addition to Heathrow, Gatwick and Stansted) are seeking to introduce a night-time operations policy¹ to gain a portion of the freight market, even if equally distributed Manston would only win under 2% of the total trade.

¹ See "Plane Speaking – a public consultation newsletter from Manston Airport" issued February 2012

- On the subject of employment, PB notes that “Airports seek to maximise their efficiency by introducing scheduled services that can be relied upon to make full use of the staff and facilities.” It later links into this, following an analysis of workload forecasts, by concluding “ ... increased productivity would be likely to absorb some employment increases.” These statements are brought together in the closing paragraphs of the same section: “ ... growth of passengers and freight in the short term may not necessarily lead to a significant employment and hence economic impact”.
- Infracore still maintain that Manston could generate “over 3,000 jobs and £65 million Gross Added Value”. However, close inspection reveals that these are grossly optimistic figures which might possibly be reached when the equally optimistic Master Plan maximum traffic levels are met. Reality is likely to be far from expectation ! We are very surprised that Infracore have not used their experience at Prestwick, where they reported a requirement of 201 jobs per million passengers, (a similar number to the 210 reported by London Luton Airport): this equates to a maximum of 442 at Manston by 2018.
- These figures also fail to explain that many of these jobs are ancillary and theoretical, created in supporting industries where there is a presumption of no slack in the workforce or efficiencies to be made to take on the extra custom. Again, reality is likely to be far from expectation.
- In all cases, there is no clear evidence to support Infracore’s predictions; no guarantee of jobs, even at Manston; nothing to suggest that the Master Plan is anything but ‘wishful thinking’. And yet the hopes of the local (and perhaps wider) communities of Kent, for economic growth and prosperity, are being raised through these assertions.

Altogether, our key findings in reviewing the economic benefits of night-flights are that Infracore’s predictions are wildly over-optimistic, give false hope to the un-employed, and used solely with a view to persuading acceptance of the night flying policy.

1.2 The Adverse Effects

Even if there were a small increase employment due to night flights, there would be much greater adverse impacts both on the health and well-being of people annoyed or woken by the flights, and on the local economy.

- Aircraft noise is recognised as being more disturbing than other transport noise, and the 2009 WHO Night Noise Guidelines for Europe states: "Noise events exceeding **45 dBA** should be limited if possible. For sensitive people an even lower limit would be preferred. It should be noted that it should be possible to sleep with a bedroom window slightly open (a reduction from outside to inside of 15 dB)". Clearly the proposed aircraft would significantly exceed that level.
- The same WHO report concluded that there was “sufficient evidence that night noise exposure causes self-reported sleep disturbances, increase in medical use, increase in body movements and (environmental) insomnia”. The report also found evidence to suggest a stronger link between night noise exposure and cardiovascular effects than daytime exposure.

- Increasing the noise burden would be against the European Noise Directive (END) 2002 which aims to maintain quiet areas, and reduce noise where it is noisy. It is also possible for people affected by noise to take action under the European Convention on Human Rights (ECHR), recognising that it is an important social issue. Noise particularly contravenes Article 8, which guarantees people the right to peaceful enjoyment of property and possessions.
- Local tourism will suffer. Holiday makers generally seek out quieter locations for rest and relaxation, and this is especially important at night. There are many anecdotal reports of holidays being ruined by night-time noise. There will also be an impact on other noise sensitive employment, such as the many language schools in Thanet.
- Evidence from both Bournemouth and Southampton Airports' Master Plans indicate that around 10% of the passengers are inbound tourists: the rest are outbound from the UK. This represents, in crude terms, a 10:1 ratio of incoming to outgoing expenditure; in other words a significant economic deficit. The UK tourism deficit reduced from £19 billion in 2008 to £15 billion in 2010 as passenger numbers decreased by 25 million, demonstrating the clear benefit of reducing air traffic.
- Furthermore, if as expected the night flights were to be used predominantly for freight imports, which consist mainly of perishable goods such as fruit and vegetables, then local food producers including Thanet Earth would be adversely affected by this biased, tax subsidised, high carbon footprint competition.
- Finally, Thanet District Council should be seeking to develop a sustainable economy². This requires the application of the 'polluter pays' principle. We have not seen any indication of how this will be achieved.

2. THE NEED FOR PLANNING PERMISSION

Again, reference is made to the report by PB as a useful source of evidence.

2.1 Lawful Development Certificates

At present, the Airport does not benefit from any form of planning permission. In its place, a total of four Certificates of Lawfulness of Proposed Use or Development (CLOPUD)³ have been issued by Thanet District Council in the past: two in 1998 and two in 1999. These are not permissions; instead, as proven by case law, these merely confer an acceptance by the appropriate issuing authority (in this case TDC) of the proposed future use and development of the land as known at the time of issue.

Therefore, any subsequent developments on the land that were not fully declared, preferably in the application documentation, when the CLOPUDs were issued, will require a separate planning permission.

² **Achieving a Sustainable Economy** – Building a strong, stable and sustainable economy which provides prosperity and opportunities for all, and in which environmental and social costs fall on those who impose them (polluter pays), and efficient resource use is incentivised. Source: Securing the future – delivering UK sustainable development strategy, HM Government, March 2005.

³ It is recognised that these are sometimes referred to as "Lawful Development Certificates" (LDCs), a term which also includes Certificates of Lawful Use or Development (CLUODs). LDCs now supersede both CLOPUDs and CLUODs).

The extension of activities into night-flying is a later development, the intent for which was not declared when the CLOPUDs were issued, and therefore will require planning permission⁴.

We recognise that the CLOPUDs have been challenged (as LDCs) in the courts. However, we believe that the approach and arguments taken at the time have missed the intent and scope of these Certificates. As proven in the courts, their validity is sound; this is not in dispute. But they are not permissions, and therefore do not confer a right on any owner of the airport to pursue additional development that is not expressly defined in the issue of the Certificate, without the benefit of planning permission.

In essence, because the CLOPUDs do not mention night flights there is no planning control in place to allow them to happen; rather than Infratil's incorrect assumption that there is no planning control in place to stop them happening.

We therefore recommend that Thanet District Council conduct a thorough review of the circumstances surrounding the issue of these CLOPUDs, and correctly determine their intent and scope. They should be mindful of their legal status at the time of issue, and that later LDCs are slightly different in the levels of development control provided. Failure to explore this area could leave the Council vulnerable to further action.

2.2 Section 106 Agreement

Notwithstanding the fact that the current Section 106 Agreement was drawn up in 2000; with an intent to review the terms of the Agreement within the following 33 months that was never followed up; and there being a number of breaches of the Agreement over the past 11 years; we consider that the Agreement does not give permission for night-flights to take place and therefore they cannot do so until further controls are in place.

- Under Part III of Chapter 8 of the Town and Country Planning Act 1990, Section 106 sets out the terms of "Planning Obligations" as being restrictions or requirements over the development or use of land (covered by the Agreement). This is quite specific in clauses 1 (a) to (d). The Agreement can rightly require the submission of a "Night-time Flying Noise Policy" (second schedule) "before the commencement of any Regular Night Flying Operations" (paragraph 1.2). But what it does not and cannot do is give permission for night-flights to happen. Therefore planning permission for night-flights remains non-existent.
- The report by PB adds further evidence of the impotence of the Section 106 Agreement to control night-time flying, through the following statements: "... the S106 was issued as a standalone planning obligation and was not specifically linked to any of the [Certificates of Lawfulness of proposed use or development]." "It is important to note that the wording of the S106 makes it clear that whilst the Council will be consulted and their views will be assessed, if the airport decides not to adhere to any views or suggestions as to changes to the policy, they are under no obligation to do so."

⁴ For evidence, please see "Lawful Development Certificates – A User's Guide" issued by CLG, available at : <http://www.communities.gov.uk/documents/planningandbuilding/pdf/developmentcertificates.pdf>

“There is nothing in the S106 of itself that would enable the Council to prevent night time flying in this instance.” In fact it appears that the only control that can be legally exercised over night flights is a financial penalty for noise breaches.

- Even if all of the above arguments are dismissed (incorrectly), the report by PB identifies (in a full and lengthy section) the need to consider intensification of activities brought about by night-flights and the need to require appropriate planning permission in such instances. While, as the report states “nowhere in the planning acts or supporting circulars or guidance is there a clear description of what constitutes intensification”, it is difficult to accept that the forecast substantial increase in night-flights does not qualify as such. Records show that in the 12 months to September 2011 there were 31 aircraft movements between the hours of 23:00 and 06:00; in comparison, the estimated number of aircraft movements for the same time period in 2018 are forecast to be over 700 per year (an increase of over 2000% !). This surely makes the argument of intensification difficult to avoid ?

We therefore strongly recommend that Thanet District Council take the opportunity presented by Infratil’s proposals for a night-flying policy to require the submission of an appropriate planning application. This will ensure that present and future development at Manston will be properly controlled within a planning framework, strengthening the Council’s ability to protect the interests of its residents while clarifying Infratil’s scope for operations. It will also set the foundation for a re-negotiation of the current Section 106 Agreement, which all parties have agreed to being long overdue.

Yours sincerely

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On behalf of

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