

ADDITIONAL SUBMISSION FROM GARETH_NARBED

Point 46 of the Report of The Head of Transactions and Universal Services appears to be the crucial point. The central legal question which I urge you to help clarify:

- Is there a clear legal duty on the airport to remove obstacles?

[explanation and background to the question: There appears to be a legal duty (an obligation) on the airport to be aware of obstacles : The table of coordinates and map provided by the airport constitute a record of awareness (Appendix 2). There also seems to be a duty to manage obstacles. However 'manage' could be interpreted as 'avoid'. This is what aeroplanes are currently doing. Therefore it can be argued that the airport is meeting its obligations and is not legally required to do any more. To re-phrase question 1: Is the airport obliged to remove obstacles from protruding within its protected surfaces?

The airport describes the primary legislation as the Civil Aviation Act 1982. There is a section missing in the paragraph quoted in SIAL's submission which should be quoted in full to the panel in order to explain my argument. As you are aware, Section 46 of this Act is about the Secretary of State having powers to exercise control over land in the interest of civil aviation.

Point 2 a: (the part omitted in the airport's quote): directions may be given for requiring the total or partial demolition of any building or structure within the area to which the order relates.

Point 2 b: directions may be given for restricting the height of trees upon any land within the area, or for requiring any tree upon any such land to be cut down or reduced in height.

2a and 2b need to be presented together because they are specified obstacles. This is important in that buildings and trees are therefore equated in the legislation. Therefore the same regard should be paid to both as obstacles. This is relevant in that the PROW panel should treat the demolition of a tree with the same level of scrutiny and concern that they would give to the demolition of a building.

EU Commission Regulation 139/2014 is presented as evidence.

This legislation is described as requiring the airport to manage all obstacles impacting on its protected surfaces. A word search of the whole document returns no instances of the words 'tree' and 'trees'. The word 'height' is used only once in a way other than in relationship to aircraft altitude and this instance relates to constructions. The legislation appears not to confer any additional powers to remove obstacles than those discussed above and similarly does not differentiate between trees and other obstacles.]

I also urge the panel to examine carefully the content and duration of the felling licence application (five years). It should also be brought to the attention of the panel that the airport has declared publicly that the 27 large pines (specified for felling as part of Phase 1 of the Forestry Commission's felling licence) are not currently at an unsafe height.

I contend there is currently good and sufficient reason to support the panel in rejecting the officer's view in point 46 of his report. If the panel is minded to accept point 46, they should do so only after the receipt of expert legal advice.

I hope that this is helpful to the panel's deliberations.