

LONDON LUTON AIRPORT

PROPOSED AMENDMENTS TO PLANNING CONDITIONS TO ALLOW FOR AN
INCREASE FROM 18 TO 19 MILLION PASSENGER PER ANNUM

RESPONSE PREPARED ON BEHALF OF NORTH HERTS DISTRICT COUNCIL

12 August 2021

Introduction

1. Vincent and Gorbings (“V+G”) have been instructed by North Hertfordshire District Council (“NHDC”) to co-ordinate a response to the planning application presently with Luton Borough Council (“LBC”) made by London Luton Airport Operations Limited (“LLAOL”) reference 21/00031/VARCON to change a number of planning conditions on the extant planning permission which presently controls operations at the airport in relation to passenger numbers and noise. This statement has been prepared following an independent audit of the application by V+G and discussions with officers. As such, it sets out the views of NHDC as a Council on the application. In delaying their response, NHDC have been able to assess the amended chapter of the ES regarding Noise and the published advice to LBC from consultants considering both this information and carbon emissions.
2. The application is described as:-

Variation of Conditions 8 (passenger throughput cap), 10 (noise contours), 22 (car parking management), 24 (travel plan) and 28 (approved plans and documents) to Planning Permission 15/00950/VARCON (dated 13th October 2017) to accommodate 19 million passengers per annum and to amend the day and night noise contours.
3. NHDC previously objected to application 19/00428/EIA which sought to allow for an increase in the area permitted within specified noise contours. NHDC raised concerns regarding the impact of that application on the amenity of North Herts residents, lack of commitment to noise insulation and a failure of LLAOL to properly balance economic and environmental considerations.
4. The same issues arise with the current application to increase passenger numbers. Moreover, the rapidly evolving aviation and climate change policy context at a national level is such that a positive decision on this application is premature. However, given the Government’s commitments in the 6th Carbon Budget and the clear advice of the Climate Change Committee (CCC) that demand management in the aviation sector will be necessary to achieve the Government’s objectives, there is every case for refusing this application. LLAOL provide no robust economic rationale or justification for allowing an increase in passenger numbers given the environmental impacts that will arise.
5. This statement expands on the above themes and touches on others. In general terms, NHDC support the submissions of Hertfordshire County Council dated 11 June 2021 to the application which robustly object to the proposed expansion.
6. Accordingly, the main issues raised in this statement as follows:-

- (i) Additional noise impacts and inability of LLAOL to control compliance;
- (ii) Continued concerns regarding traffic impacts and air quality considerations;
- (iii) Impact on Greenhouse Gas Emissions and Government climate change commitments
- (iv) Approach of the Environmental Statement to reasonable alternatives;
- (v) Reliance on documents that have yet to be agreed as part of the mitigation strategy;
- (vi) Failure to properly balance economic benefits and environmental costs.

Noise Impacts

7. If this application were to be approved, it is forecast to give rise to significant adverse noise effects in the 'worst case' assessment year of 1,877 dwellings by virtue of night-time noise level increases of more than 1dB arising in locations exposed to average noise above the SOAEL (55dB LAeq,8h).
8. Many of these residents will be in North Hertfordshire District in areas that have already seen an adverse impact on amenity due to the rapid increase in passenger numbers and Air Traffic Movements (ATMs) at the Airport in recent years. However, since the data is not disaggregated by Local Authority, it is not possible to say how many of NHDC's residents will be effected by the changes proposed. It would be helpful if there was disaggregation of the noise effects by Local Authority administrative area such that LBC, NHDC and others could properly assess the scale of the effect in their own particular area. Moreover, LBC should be satisfied, based on this information, that the receptor based mitigation in each area is sufficient to address the predicted effects.
9. A much greater number will be impacted by noise and overflights more generally, and noise sensitive locations such as primary schools, care homes and churches will be impacted, as well the enjoyment of public open space within the District.
10. Moreover, NHDC's emerging Local Plan allocates strategic development to the east of Luton in policy SP19 (sites EL1, EL2 and EL3) for approximately 2,100 homes. The emerging policy requires that development will be required to include appropriate noise mitigation measures, to potentially include insulation and appropriate orientation of living spaces. The Plan highlights that the site is in close proximity to Luton Airport noise corridors and mitigation measures may be required, particularly towards the south-east of the site which lies closest to the flight path. Whilst receptor based mitigation is therefore assumed, it will nevertheless increase the amount of development affected by aircraft noise.
11. The applicant's ES accepts that the proposals will have significant adverse noise impacts on health and quality of life. It proposes mitigation in the form of noise insulation, and argues that all impacts are thus addressed and the proposals are therefore acceptable. However, it also accepts that the proposed mitigation will only minimise the noise when windows are closed and there remains a potentially significant (minor to moderate) residual health effect on some residents experiencing noise above the daytime and night-time SOAEL levels.

12. Indeed, it is inevitable that most people will always need to or want to have their windows open for ventilation purposes at various times, including at night. The vast majority of existing properties have no other means of ventilation and even at new properties that might be built taking account of the noise climate, the airport's activities should not prevent the ability of residents to enjoy fresh air within their dwellings and within private and public open spaces. It is therefore considered that receptor based sound insulation that relies on windows being closed is a serious admission that the amenity of NHDC residents will not be protected if this proposal is permitted.
13. We would question (i) whether the modelling is realistic and can be relied upon (ii) whether future breaches may occur and how they would be controlled and (iii) whether the approach to receptor based mitigation can be justified as against other approaches to airport management that would avoid the impacts occurring.
14. The assumptions regarding noise are clearly reliant on the modernisation of and changes to the fleet of aircraft serving the Airport, and this is outside of the control of the Airport operator. We would question whether realistic modelled aircraft noise levels of the A321Neo have been used to determine the extent of the noise contour limits. We would also question whether the modelled fleet mix is realistic. Our understanding, for example, is that Ryanair intend to continue using the Boeing 737 Max. Moreover, the modelling does not specify the engine type and whether the modelling is based on the CFM LEAP or the PW1100G. In addition, the noise modelling relies on the forecast Air Traffic Movements (ATMs) associated with more passengers, which suggest very little change, with the increase in passenger numbers coming to fruition as a result of larger aircraft and greater loading.
15. Overall, NHDC has serious concerns about the reliability of the noise modelling and the assumptions and predictions that lie behind it. If the assessment is unreliable or unrealistic, the conclusions of the assessment are at best questionable and there is a clear risk that the history of breaches in planning control that have taken place in recent years, requiring noise contours to be redrawn to accommodate actual operations, will be perpetuated.
16. Indeed, the failure of previous assessments to accurately predict matters such as fleet mix, passenger numbers, aircraft type and ATMs is a fundamental reason for changes to conditions sought previously. Prior to the impact of Covid-19 on air travel, increases in passenger throughput took place at a faster rate than previously assumed, and technological change and modernisation with quieter aircraft has not kept pace. The result is that the residents of North Hertfordshire and other areas around the airport have been forced to endure increases in noise that were not planned for or indeed permitted. The airport operator has asserted that the pace of growth and the consequent breaches of conditions were outside of its control. We support HCC's clearly expressed view in this regard that passenger throughput and noise monitoring and reporting required as part of the original planning permission should have reasonably predicted the possibility of breaches and put in place appropriate management and operational restrictions. Overall, NHDC consider that with this current proposal there is every risk that allowing an increase in passenger numbers and extending noise contours to accommodate previous breaches of planning control is likely to increase night flights, further worsening the ability of NHDC residents to sleep undisturbed.

17. Indeed, LLAOL did seek to put in place some mitigation measures when existing contour limits were exceeded in 2018 and 2019 including restrictions on further growth to night-time traffic. No-where in the documentation relating to this application are alternatives considered such that the mitigation proposed (i.e. receptor based sound insulation) could be avoided as the ES assumes maintaining the existing cap is not a reasonable alternative. We comment on the approach of the EIA further below, but the principle of changing contours to accommodate previous breaches to conditions is entirely against the mitigation hierarchy.
18. If the LPA intends to approve this application, the receptor based mitigation will be crucial to the protection of the amenity of North Herts residents. It is noted and welcomed that the revised ES Noise Chapter appears to withdraw any financial limitations on this scheme.
19. If the application is approved, a clear and binding S106 agreement should be agreed to ensure that the airport commits to delivering a comprehensive sound insulation scheme. It should set out how the affected community will be contacted to ensure maximum take up and a timetable for implementation from the time planning permission is granted and before the noise effects would be experienced.
20. Fundamentally, however, in respect of noise impacts, the proposals are contrary to NPPF para. 185 which requires that development should “*mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life.*” It is also contrary to Luton Local Plan policies LLP6 and LLP38.
21. The proposed changes to noise contours also contradict commitments made by LLAOL in their *Environmental Noise Directive Noise Action Plan 2019-2023 Luton Airport (NAP)*. Key Performance Indicator 3 states that LLAOL will, with respect to the night-time contour “*Limit and where possible reduce the population within the contour over the course of the action plan.*” At Section 3 LLAOL state that “*Where restrictions are in place we are focused on ensuring that they are adhered to fully.*” Item 3.4 states that LLAOL will “*operate within our agreed contour area limits*” whilst item 3.5 states that they will “*Develop a noise contour reduction strategy to define methods to reduce the area of the noise contours.*” The proposals run entirely counter to these commitments.

Traffic and Air Quality

22. The Environmental Statement and Transport Assessment set out that the increase from 18mppa to 19mppa will result in a worse-case minor increase in traffic flows of 3.7% in the AM peak and 3.2% in PM peak between the 2019 and 2024. They further state that in discussions with Highways England and LBC, it was established that this level of flow increase is unlikely to have a significant impact on the operation of the network and as such does not warrant any further detailed transport modelling analysis at this stage.
23. However, NHDC remain concerned about *any* increases in traffic associated with the increase in passenger numbers. As it has been agreed between the aforementioned parties that no further modelling is necessary, it is not possible to determine whether there are any impact on the local highway network within the District. In addition, in previous comments through the DCO consultation process, NHDC made clear their

concern regarding the cumulative impacts of growth at the Airport with significant residential development proposed east of Luton and around Hitchin including settlements north of Hitchin within Central Bedfordshire. Additional passenger growth will exacerbate any potential cumulative impacts.

24. Whilst the aspirations of the travel plan are welcomed, NHDC remain concerned that east-west public transport is significantly less well developed than north-south and this will result in a disproportionate impact on the District's highway network, particularly along the A505 corridor. In particular, NHDC remain seriously concerned as to the impact of additional passenger numbers on traffic and air quality conditions, in particular in and around Hitchin which are not considered at all in the application documentation.
25. Concerns about the lack of traffic modelling and the success or otherwise of modal shift of passengers and employees coming from or passing through North Hertfordshire are coupled with concerns regarding air quality impacts. In 2016 an area around the Payne's Park roundabout, Hitchin was declared as an AQMA because nitrogen dioxide was being measured at concentrations above the standard set to be protective of human health. This location, within the A505 corridor, is highly sensitive to any changes in traffic volumes. Accordingly NHDC are concerned that further growth at the airport will have a particularly detrimental impact on residents in this area. NHDC already consider that the Airport has a disproportionately adverse impact on Hitchin due to the relatively poor sustainable transport links from the A1 corridor to the Airport. The updated Travel Plan will not address this issue.

Climate Change and carbon reduction

26. LLAOL's overall planning case relies upon national aviation policy support. As the Planning Statement points out *"The Government is explicitly supportive of airports beyond Heathrow making best use of their existing runways as noted in the Beyond the Horizon: The Future of UK Aviation – Making Best Use of Existing Runways (2018)."*
27. It also relies on the Government's position on Climate Change adaptation embraced in the Climate Change Act 2008, as amended in 2019. It sets out the position that existed when the application documentation was written in January 2021:-

"International aviation is not part of the 'net UK carbon account' and so is not included in the UK carbon target or the UK carbon budgets, but the UK carbon budgets are to be set 'having regard to' international aviation. In practice, successive carbon budgets have been set allowing for 'headroom' for what is sometimes referred to as the 'planning assumption' (also referred to as the 'aviation target')."
28. However, since this statement was written, the landscape of climate change policy and its implications for the aviation industry have radically changed.
29. At the local level, many authorities, including NHDC and Luton Borough Council have declared a climate emergency. On 21 May 2019, NHDC passed a Climate Emergency motion which pledged to do everything within the Council's power to achieve zero carbon emissions in North Hertfordshire by 2030. This declaration asserted the Council's commitment toward climate action beyond government targets and international agreements. The Council also has a Climate Change Strategy that has

been reviewed in 2021 to align the strategy with latest research regarding the impact of climate change. The new strategy contains an action plan, which sets out how NHDC aim to achieve a carbon neutral position by 2030. Luton Borough Council has adopted a climate change action plan which sets out actions to meet an organisational commitment to achieving net zero by 2040. These documents pre-date LLAOL application but are not referred to in the Environmental Statement.

30. In April 2021 the Government announced the adoption of some of the recommendations of the Climate Change Committee (CCC) in the 6th Carbon Budget, with a new target of a 78% reduction in CO₂ by 2035 (15 years ahead of its original target) and the inclusion of international aviation and shipping in the target. This compares to the policy of only two years previously when the UK was aiming at an 80% cut in CO₂ by 2050, excluding aviation and shipping.
31. The detail of the sectoral impact of the 6th Carbon Budget is yet to be published but what is clear is that the aviation sector will no longer be able to rely on other sectors making compensatory reductions such that it is unaffected. Equally clear is that the CCC have stated that demand management in the aviation sector is likely to be needed if the UK's commitments are to be achieved. Reliance on technological innovation to achieve net zero was always unlikely to be feasible and fleet investment and modernisation is likely to be slower in the wake of the impact of COVID-19 on the aviation industry.
32. Unfortunately, there has been no clarification from the Government as to how and when MBU and aviation policy more generally might be updated. The CCC recommended only a 25% growth in passengers by 2050 compared to 2018, compared to 65% growth forecast by the DfT unconstrained forecasts. Now that the Government has confirmed that the Sixth Carbon Budget will include aviation, whilst not specifically accepting the CCC's policy recommendations on demand management, it seems very likely that MBU policy, and decisions on DCOs and applications such as this one through the TCPA regime, will need to consider whether permitting increases in throughput are compatible with Government policy.
33. Indeed, as clearly set out in the Ricardo Energy and Environment report prepared for LBC1:-

"Making Best Use of Existing Runways (MBU), has a 'planning assumption' for aviation emissions of CO₂ of 37.5MtCO₂. However it was written in 2018, before the Climate Change Act was amended to net zero, and before aviation was incorporated in the sixth carbon budget. Whilst MBU for now remains extant, the 37.5MtC target is simply mathematically incompatible with the decision to include aviation within the sixth carbon budget and the trajectory to net zero"
34. Indeed, the report highlights that decisions have already been made on expansion at other airports that will consume the planning assumption emissions and a number of decisions on capacity increases are the subject of Judicial Review or call-in by the Secretary of State.

¹ Review of Luton Airport proposal to allow 19mppa: implications for carbon emissions Report for Luton Borough Council on Planning Application 21/00031/VARCON to vary conditions to Planning Permission 15/00950/VARCON, Ricard Energy and Environment, 28/05/21

35. One of the key ways in which LLAOL propose to mitigate its impact on climate change is by its Carbon Reduction Plan. However, whilst it can achieve much by changes in ground operations, fundamentally it cannot influence technological changes in the fleet visiting the airport.
36. Given the above, NHDC consider that there is a case for refusal of the application on the basis of the conflict of the proposals with national and local climate change policy. At the very least, any decision now, pending further detail on the Sixth Carbon Budget and how MBU is to be addressed in this context, will be premature and should be delayed until national aviation policy is revised to take into account the Government's most recent commitments and decisions already made at other airports that have already allowed increases in capacity.

Environment statement and reasonable alternatives

37. The approach of the ES to reasonable alternatives is flawed. LLAOL accept that the only potential alternative to the Proposed Scheme is to continue to operate at the 18 mppa cap, although argues that *“to progress with this alternative would not have delivered the anticipated economic growth.”* As we set out below the economic impacts of the proposed increase in passenger number has not been quantified and failing to achieve it is no justification for arguing that the existing cap is not a reasonable alternative.
38. The ES goes on to state that to achieve the alternative would mean that *“restrictions would have to be placed on airlines to be confident that compliance with conditions attached to the 2014 Planning Permission was achievable“* and that *“Furthermore, without restrictions on airlines there would be a risk of repeated breaches of Condition 10. As such, the ‘doing nothing’ option was not considered to be a reasonable alternative.”*
39. This suggests that LLOAL believe that that if the proposed changes are not permitted, any restrictions themselves would not be reasonable and in all likelihood breaches would simply continue.
40. Although the 18 mppa cap is used in the ES as the ‘do-nothing’ it is indicative of the approach of LLAOL to suggest that the planning regime should simply be adjusted to meet their operational requirements rather than seek to quite reasonably control them.

Future Control, monitoring and compliance

41. Mitigation of the environmental impacts of the development rely on a number of further documents, some of which are submitted for approval as part of the application (Car Parking Management Plan, Travel Plan) and some of which are not (Noise Reduction Strategy, Carbon Reduction Plan). However, all of these documents are critical to the acceptability of the proposal and should therefore be approved as part of the application. Without them being considered in detail and approved at this stage, there can be no reliance on the conclusions of the ES in terms of the significance of related environmental effects. There is a clear parallel with Development Consent Orders where compliance with certified documents is a requirement of the Order itself and allows the robustness of the mitigation proposed to be properly considered through the decision making process.

42. We note from HCC's response to the application that a Noise Reduction Strategy was submitted in February 2020, but was considered by the local planning authority to be not fit-for-purpose and is still in the process of being developed and remains to be approved. We fully support HCC's comments that this should be resolved as part of this application.
43. We further understand that LLAOL have now submitted an 'Outline Carbon Reduction Plan' and this is the subject of discussions with the LPA. However, this advises that *"LLAOL has committed to develop a detailed Carbon Reduction Plan that builds on this outline plan, by the end of 2022, which will provide detailed and viable targets for an absolute reduction in carbon emissions and achieving net zero."*
44. We do not consider this position as tenable given the overriding need to fully address this matter now, prior to the determination of the application. It must be right that 'detailed and viable targets' are established before a decision on this application is made. Moreover, we are sceptical that LLAOL has sufficient influence over the wider aviation industry to achieve the necessary changes in emissions from flights operating in and out of the airport to actually achieve the carbon reduction emissions that the outline Carbon Reduction Plan seeks to achieve.
45. Notwithstanding, each of these mitigation strategies must include clear, robust and funded monitoring arrangements and penalties and remedial actions for non-compliance or non-achievement of targets, agreements, or other criteria.

Economic Benefits and the Planning Balance

46. No-where in the planning application documents are the economic benefits of the development properly enumerated, or any analysis provided of the negative economic impact of maintaining current restrictions.
47. The Planning Statement makes only very general claims that the airport is a *"key economic driver within the region, delivering significant GVA and employment and providing substantial benefits to the wider economy by facilitating travel for business passengers and for inbound visitors."* It adds that the airport plays a supporting role in the tourism sector and asserts that :-

"The Proposed Amendments would deliver more economic benefits than the 'do-nothing' scenario (i.e. maintaining operations under the Original Planning Permission)."
48. It concludes at para. 8.8.2 that :-

"whilst the Proposed Amendments will result in some adverse environmental effects, these have been mitigated so far as possible. Taking into account the significant economic benefits associated with expansion of the airport to 19 mppa and considering the existing and enhanced mitigation on balance it is considered that the Proposal is compliant with the Development Plan, national planning policy and other material considerations."
49. However, no attempt is made to define the scale of such benefits and how they would be distributed within the local, regional or national population. For example, although the adverse environmental effects will be felt locally, including by residents of NHDC,

any alleged tourism benefits are only likely to be experienced at tourist destinations either within the UK (primarily London) or indeed abroad, and certainly not in the NHDC area. It is therefore impossible to reach the conclusion that the economic benefits outweigh the environmental costs. . This is a clear and significant failing of the application and must be rectified before LBC decide on the planning application.

50. Indeed it is difficult to understand how the planning statement reaches the conclusion that there will be 'significant economic benefits.' LLAOL themselves accept that such economic benefits would not be significant since socio-economic impacts have been scoped out of the EIA process (ES, para. 4.4.33 – 4.4.36). Whilst the ES states that *"There could be potential for beneficial effects upon employment and the local economy associated with the increase in passenger numbers"* the fact is that LLAOL have scoped out this effect, on the basis that, as with all scoped out topics, *"there is limited scope for likely significant effects as a result of the Proposed Scheme"* on this topic. (4.4.9)
51. It is in this context that the overall planning balance must be considered on the basis of the governing approach of Section 38(6) of the Planning and Compulsory Act that states that *"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."*
52. It has already been stated above that the proposal is contrary to the development plan by virtue of conflicts with the Luton Local Plan in respect of LLP6 and LLP38. It is also to be considered contrary to policy of the NPPF and policies adopted in North Herts and in other Local Authorities in the area regarding the Climate Emergency. The NPPF sets out a presumption in favour of sustainable development and sets out that there are three dimensions to this, namely economic, social and environmental and that these objectives need to be pursued in 'mutually supportive ways.' The wording of para. 8 on the environmental dimension has been amended in the July 2021 version of the NPPF by the replacement of "to contribute to protecting and enhancing" the environment to simply "...to protect and enhance" the environment. The NPPF does not suggest that positive effects of one objective can outweigh negative effects in respect of the others; whereas LLAOL adopt this approach.
53. Even if such a planning balance in deciding whether the application comprises sustainable development is a legitimate interpretation of the NPPF, the economic benefits have not been quantified such that LBC as the decision maker cannot judge this planning balance; moreover, LLAOL themselves consider that the economic impact is not significant which suggests that the conclusion in the Planning Statement is flawed. It is therefore difficult to see how the accepted impacts of noise on the health and well being of the local community as well as the wider impact on GHG emissions and climate change could be outweighed by the economic benefits of expansion.

Conclusion

54. From the above, NHDC object to the application and consider that there is every case that it should be refused.
55. At the very least, a decision on the application should not be made until :-

- a. Government policy on aviation is clarified in the wake of the 6th Carbon Budget, particularly with regard to MBU;
- b. The Noise Reduction Strategy and full Carbon Reduction Plan are agreed between all local authorities around the Airport.