



11 June 2019

Your ref:

Our ref:

By e-mail to M42Junction6@planninginspectorate.gov.uk

Dear Sirs

**PLANNING ACT 2008 (AS AMENDED) – SECTION 55:
APPLICATION BY HIGHWAYS ENGLAND FOR AN ORDER GRANTING DEVELOPMENT
CONSENT FOR THE M42 JUNCTION 6 IMPROVEMENT SCHEME**

Following the Issue Specific Hearing on 22 May I would like to confirm the matters raised by Birmingham Airport (BAL) together with other relevant matters regarding the schedule of the Panel's issues and the questions relating to the draft Development Consent Order (DCO1).

Questions relating to the draft Development Consent Order

Question 4: Article 6 - Limits of Deviation

Article 6 of the Draft DCO deals with vertical limits of deviation. It states that;

*"the undertaker may, so far as the undertaker considers it necessary or convenient—
(a) deviate laterally from the lines or situations shown on the works plans to the extent
of the limits of deviation shown on those plans;*

*(b) deviate vertically from the levels of the authorised development shown on the
engineering drawings and sections—*

*(i) in respect of the construction of a new Solihull Road Overbridge referred to in Work
No. 3, to a maximum of 1.5 metres upwards or downwards; and*

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(ii) in respect of any other work comprised in the authorised development, to a maximum of 0.5 metres upwards or downwards,"

It then goes on to state that;

"except that these maximum limits of deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially worse adverse environmental effects from those reported in the environmental statement."

This final paragraph, subject to the agreement of the Secretary of State, allows the height of the development to be increased with no maximum limit where that increase would not give rise to any materially new or materially worse adverse environmental effects. However, this fails to take into account aerodrome safeguarding.

The proposed development lies directly to the south and in close proximity to Birmingham Airport's runway. It is therefore vital that the proposed development does not prejudice aerodrome safeguarding by introducing development that breaches the Obstacle Limitation Surface (OLS). If the OLS is breached then arriving and departing aircraft would be put at risk.

Given the environmental statement does not address aerodrome safeguarding the final paragraph in Article 6 should be amended to read as follows:

"except that these maximum limits of deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially worse adverse environmental effects from those reported in the environmental statement or give rise to any materially new or materially worse aerodrome safeguarding effects."

Question 29: Schedule 2, Part 1 - Requirements (R3)

Condition 3 is worded in such a way to allow amendments to be made to the approved development where they '*would not give rise to any new or materially worse adverse environmental effects in comparison with those reported in the environmental statement*'.¹

For the same reasons in respect of Article 6, this should be amended to the following;

"...would not give rise to any new or materially worse adverse environmental effects in comparison with those reported in the environmental statement or give rise to any materially new or materially worse aerodrome safeguarding effects."

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Question 33: Schedule 2, Part 1- Requirements (R8)

Surface water drainage, if not implemented and maintained correctly, can attract birds which then pose a threat to aviation safety through increased potential for birdstrikes. This is recognised by the Civil Aviation Authority who make it very clear to aerodrome operators that it requires them to act in relation to the presence of flocking birds on and in the vicinity of the aerodrome. CAP 772 (Wildlife Hazard Management at Aerodromes) states that;

“Open, standing water, such as balancing ponds, reed beds and watercourses, drainage ditches or river channels, may attract large flocking birds, including ducks, geese, swans, grebes, waders, herons, coot, moorhen and cormorant. The more open water sites there are on and around an aerodrome, the more complex and frequent the movements of waterfowl will be. There may also be more activity at night than during the day.” (Page 25)

With specific regard to Birmingham Airport, our annual bird strike numbers are amongst the highest in the UK and the proposed development is under the most critical phase of flight for both departures and arrivals. The potential therefore exists for safety significant events to occur as a result of bird strikes with bird species that frequent the airfield and its surroundings.

It should also be noted that BAL experiences bird strikes involving lower risk species such as swifts and swallows. Some smaller species however present significant risk to aircraft due to their flocking behaviour.

The final sentence of this condition should therefore be amended to the following:

“(2) The surface and foul water drainage system must be constructed in accordance with the approved details, unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its function, provided that the Secretary of State is satisfied that any amendments to the approved details would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement or give rise to any materially new or materially worse aerodrome safeguarding effects.”

Other Matters

In addition to the above I wish to submit the following general comments on the Draft DCO, Schedule 2 Part 1 – Requirements and Statements of Common Ground;

Requirement 4 (Outline Environmental Management Plan)

Parts (d)(xiii) and (xiv) of Requirement 4 (Outline Environmental Management Plan) require management plans relating to Bird Strike Management and Crane Management to be included in the construction environmental management plan (CEMP). Birmingham Airport welcomes this requirement.

However, whilst the REAC states that measures relating to the management of bird movements during the construction phase of the Scheme will be included within an outline Bird Strike Management Plan following consultation with Birmingham Airport, there appears to be no similar consultation process regarding the Crane Management Plan. BAL asks that it is also consulted on the Crane Management Plan to ensure that it satisfactorily mitigates the impact of the construction on aerodrome safeguarding and the safety of aircraft arriving and departing from Birmingham Airport by ensuring that the Obstacle Limitation Surface is not breached. This could either be enshrined in the condition itself or within a revised REAC.

Requirement 5 (Landscaping)

This condition requires a landscaping scheme to be submitted to and approved in writing by the Secretary of State and includes a number of criteria that must be satisfied including that *“The landscaping scheme must reflect the mitigation measures set out in the REAC...”*.

CAP 772 (Wildlife Hazard Management at Aerodromes) states the following with regards to landscaping:

“Landscaping developments include grass reinstatement, tree and shrub planting and may include the creation or enhancement of water features. Landscaping schemes have the potential to:

- *Create dense vegetation that may become a roost;*
- *Provide an abundant autumn and winter food supply in the form of fruits, nuts and berries;*
- *Create standing water or watercourses that attract gulls and waterfowl; and*
- *Result in areas of short grass that provide feeding opportunities for a wide range of hazardous wildlife.*

As they can increase the wildlife attraction, any landscaping scheme on the aerodrome should, be avoided and could also set a precedent for safeguarding policies concerning off-airfield developments.”

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It is therefore considered that BAL should be consulted on the landscaping scheme prior to its approval to ensure that it would not adversely impact aerodrome safety through an increased risk of birdstrike. This could either be enshrined in the condition itself or within a revised REAC.

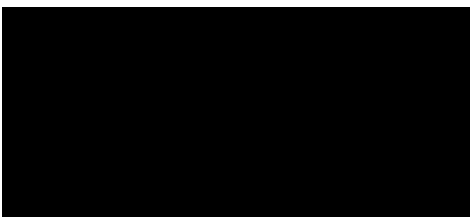
Statements of Common Ground

Annex E, Part 2 of your letter dated 23 April 2019 (*Notice of appointment of the Examining Authority and date, time and place of the Preliminary Meeting*) deals with Statements of Common Ground (SoCG). In this section it states that SoCG are requested to be prepared by a number of interested parties including Solihull Metropolitan Borough Council, HS2 and Natural England.

During the Issue Specific Hearing it was agreed that Birmingham Airport be added to this list. This is welcomed. The proposed development is directly to the south of Birmingham Airport's runway and as such it is crucial that aerodrome safeguarding is fully addressed and the safety of passengers is not compromised. Furthermore, as stated in our 'Relevant Representation' dated 26 March 2019, whilst the airport strongly supports Highways England's proposal to bring forward improvements to M42 Junction 6 to address the existing and significant congestion issues associated with this key part of the strategic road network, there are a number of issues that need resolving to further enhance the benefits of the scheme together with a level of uncertainty around property matters (BAL own some of the land affected by the development). A SoCG between the airport and the applicant would help to address these issues.

I hope this clarifies Birmingham Airport's comments made at the hearing on 22 May but if you require any further information please do not hesitate to contact me.

Regards



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