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The Planning Act 2008

**The Infrastructure Planning (Applications: Prescribed Forms and Procedure)
Regulations 2009**

**London Luton Airport Expansion Development Consent
Order 202x**

5.06 STATEMENT OF STATUTORY NUISANCE

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1 INTRODUCTION

- 1.1.1 Luton Rising (a trading name of London Luton Airport Limited (the ‘Applicant’)), is proposing to expand London Luton Airport (‘the airport’) through an application for development consent for works that would allow growth from the currently permitted capacity of 18 million passenger per annum (mppa) to accommodate 32 mppa (hereon referred to as the ‘Proposed Development’). A full description of the Proposed Development is provided in **Chapter 4** of the Environmental Statement (ES) **[TR020001/APP/5.01]** also submitted as part of the application for development consent.
- 1.1.2 This document is the Statement of Statutory Nuisance prepared and submitted as part of the application for development consent under the Planning Act 2008.

1.2 The purpose of this report

- 1.2.1 The requirement for a Statement of Statutory Nuisance is set out in Reg 5(2)(f) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 which states that:
- “The application must be accompanied by.... a statement whether the proposal engages one or more of the matters set out in section 79(1) (statutory nuisances and inspections therefore) of the Environmental Protection Act [EPA] 1990, and if so how the applicant proposes to mitigate or limit them.”* (Ref. 1)
- 1.2.2 This Statement of Statutory Nuisance provides an explanation of the matters set out in section 79(1) of the EPA 1990 in respect of statutory nuisance, the potential implications of the Proposed Development and the measures that have been incorporated into the design to limit any such potential nuisances.
- 1.2.3 This document is part of the application for development consent for the Proposed Development, and should be read alongside other application documents. In particular, the assessment **Chapters 6 to 20** of the ES **[TR020001/APP/5.01]** and the Code of Construction Practice (CoCP) provided as **Appendix 4.2** of the ES **[TR020001/APP/5.02]**. The Environmental Impact Assessment (EIA) reported in the ES was undertaken in accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (Ref. 2) and describes mitigation measures considered in the assessment. All environmental mitigation measures considered in the ES are summarised in the **Mitigation Route Map [TR020001/APP/5.09]** submitted as part of the application for development consent. This document considers those measures in place and is not intended to reproduce them.

2 POLICY AND STATUTORY CONTEXT

2.1.1 Section 79(1) of the EPA 1990 (Ref. 2), provides that the following matters constitute statutory nuisances:

- “(a) any premises in such a state as to be prejudicial to health or a nuisance;*
- (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;*
- (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;*
- (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;*
- (e) any accumulation or deposit which is prejudicial to health or a nuisance;*
- (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;*
- (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;]*
- (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;]*
- (g) noise emitted from premises so as to be prejudicial to health or a nuisance;*
- (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street;*
- (h) any other matter declared by any enactment to be a statutory nuisance;*

and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 below and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.” (Ref. 3)

2.1.2 The Airports National Policy Statement (ANPS) considers common law nuisance and statutory nuisance under paragraphs 4.60, 4.61:

“Section 158 of the Planning Act 2008 provides a defence of statutory authority in civil or criminal proceedings for nuisance. Such a defence is also available in respect of anything else authorised by an order granting development consent. The defence does not extinguish the local authority’s duties under Part III of the Environmental Protection Act 1990 to inspect its area and take reasonable steps to investigate complaints of statutory nuisance and to serve an abatement notice where satisfied of its existence, likely occurrence or recurrence.

During the examination of an application for development consent for infrastructure covered under the Airports NPS, possible sources of nuisance under section 79(1) of the Environmental Protection Act 1990 and under sections 76 and 77 of the Civil Aviation Act 1982 should be considered by the

Examining Authority. The Examining Authority should also consider how those sources of nuisance might be mitigated or limited so they can recommend appropriate requirements that the Secretary of State might include in any subsequent order granting development consent.” (Ref. 4).

2.1.3 And under paragraphs 5.230 and 5.231:

“The construction and operation of airports infrastructure has the potential to create a range of emissions such as dust, odour, artificial light, smoke and steam. All have the potential to have a detrimental impact on amenity or cause a common law nuisance or statutory nuisance under Part III, Environmental Protection Act 1990.219 These may also be covered by pollution control or other environmental consenting regimes.

Because of the potential effects of these emissions and in view of the availability of the defence of statutory authority against nuisance claims described previously, it is important that the potential for these impacts is considered by the applicant in its application, by the Examining Authority in examining applications, and by the Secretary of State in taking decisions on development consent.” (Ref. 4).

3 MATTERS RELEVANT TO THE PROPOSED DEVELOPMENT

3.1.1 Section 79 of the EPA 1990 contains definitions and exemptions in respect of statutory nuisance. Where particular exceptions are of relevance to the Proposed Development, or potential nuisances are not relevant due to the nature of the Proposed Development, they are described in **Table 3.1** and not considered further in this document. Where potential statutory nuisance is considered relevant to the Proposed Development, they are considered further in **Section 4** of this document:

Table 3.1: Statutory Nuisance relevance to Proposed Development

| Nuisance in Section 79(1) of the EPA 1990 | Relevance to Proposed Development |
|---|---|
| (a) any premises in such a state as to be prejudicial to health or a nuisance; | There are no premises within the DCO Order Limits or included in the Proposed Development in such a state that would be prejudicial to health or a nuisance. |
| (b) smoke emitted from premises so as to be prejudicial to health or a nuisance; | Smoke is not expected to be generated during construction of the Proposed Development. As set out in the CoCP ([TR020001/APP/5.02]), no burning of waste or bonfires would be permitted on any of the sites during construction or operation of the Proposed Development. The existing Fire Training Ground (FTG) to the east of the existing terminal would continue to operate during assessment Phase 1 and 2a, however, it will be re-located to a new site south of the runway on the airport southern boundary in assessment Phase 2b. Potential nuisance is considered further in Section 4 . |
| (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance; | EPA 1990 section 79(4) provides that this does not apply in relation to premises other than private dwellings. The Proposed Development does not involve the emission of any fumes or gases from private dwellings. |
| (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance; | The construction and operation of the Proposed Development has the potential to emit dust, and smell. Potential nuisance is considered further in Section 4 . |
| (e) any accumulation or deposit which is prejudicial to health or a nuisance; | The construction of the Proposed Development will require materials to be excavated, transported and stored on site. Potential nuisance is considered further in Section 4 . |

| Nuisance in Section 79(1) of the EPA 1990 | Relevance to Proposed Development |
|--|---|
| (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance; | No animals are to be kept on site as part of the Proposed Development. |
| (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;] | Current waste and landscape management procedures are expected to continue to prevent insects emanated from the airport. However, waste materials will be excavated and treated, and habitats created, as part of the Proposed Development. Potential nuisance is considered further in Section 4 . |
| (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;] | EPA 1990 section 79(5B) subsection (1)(fb) provides that this does not apply to artificial light emitted from (a) an airport. |
| (g) noise emitted from premises so as to be prejudicial to health or a nuisance; | EPA 1990 section 79(6) provides that subsection (1)(g) does not apply to noise caused by aircraft other than model aircraft. There is potential for noise emitted from other activities associated with the construction and operation of the Proposed Development. Potential nuisance is considered further in Section 4 . |
| (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street; | EPA 1990 section 79(6A) subsection (1)(ga) does not apply to noise made by, amongst other matters, traffic, but would apply to construction vehicles and plant. Potential nuisance is considered further in Section 4 . |
| (h) any other matter declared by any enactment to be a statutory nuisance; | There are no other matters or elements of the Proposed Development which could be considered a statutory nuisance known at this time. |

3.1.2 This Statement considers the following statutory nuisances under the EPA 1990 to be relevant to the construction and operation of the Proposed Development:

- (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
- (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- (e) any accumulation or deposit which is prejudicial to health or a nuisance;
- (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
- (g) noise emitted from premises so as to be prejudicial to health or a nuisance; and

(ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street. Potential breaches of section 79(1), EPA 1990.

4 POTENTIAL FOR STATUTORY NUISANCE AND MITIGATION

4.1 Introduction

4.1.1 This section considers the potential for the relevant statutory nuisances identified in **Section 3** arising from the Proposed Development, and the mitigation proposed to manage this potential.

4.2 (b) Smoke emitted from premises so as to be prejudicial to health or a nuisance

- 4.2.1 The existing airport includes a Fire Training Ground (FTG) which is located east of the long stay car parking and south of Wigmore Valley Park which is currently visible to the general public from outside of the airport premises. The FTG is used for training purposes during the day and night on average twelve times a month by the airport's fire services and periodically by external fire services. This is managed by the existing operators of the airport, London Luton Airport Operations Limited (LLAOL).
- 4.2.2 The training rig is gas powered and therefore does not produce smoke during standard training scenarios. However, Fire Behaviour Training carried out for the purposes of recognising signs and symptoms of fires necessitates smoke; this training activity requires the generation of smoke by burning clean (glue and resin free) plywood.
- 4.2.3 To date, these activities have been undertaken without complaint from the public or intervention from the relevant planning authority.
- 4.2.4 During assessment Phase 1 and 2a the FTG will continue to operate as it has done without complaint from the public or intervention from the relevant planning authority, therefore, its continued use is unlikely to constitute a statutory nuisance.
- 4.2.5 As part of the Proposed Development, during assessment Phase 2b, this FTG would be moved to a new location south of the runway within the existing airport boundary, outside the Green Belt, approximately 300m north east from the nearest residential property. The FTG would continue to be used in the same frequency as the current operation, and would continue to be managed and operated by the operators of the airport. In this new location, the FTG would be further from the large concentration of receptors north of the existing airport. As the prevailing wind direction in Luton is from the south west, any smoke generated would be blown away from the nearest receptors to the south.
- 4.2.6 **Chapter 6** Agricultural Land Quality and Farm Holdings and **Chapter 7** Air Quality of the ES [TR020001/APP/5.01] do not identify significant air quality effects or significant effects upon farm holdings from the operation of the FTG. Therefore, there would be no smoke emitted that would constitute a statutory nuisance.

4.3 (d) Dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance

- 4.3.1 As reported in **Chapter 7** Air Quality of the ES [TR020001/APP/5.01] combustion emissions from construction site vehicles and plant, dust, and odour would not be significant. Operational emissions from on-site combustion, airport ground operations including odour, surface access traffic, and aircraft were assessed and would not result in a significant adverse environmental effect therefore would not constitute a statutory nuisance.
- 4.3.2 As reported in **Chapter 20** Water resources and Flood Risk of the ES [TR020001/APP/5.01] the lead contractor would be required to prepare Construction Surface Water Management Strategy (CSWMS) as part of their Environmental Management System (EMS) to protect the quality of surface water runoff during construction. The Proposed Development includes water collection, treatment, reuse and sustainable discharge to ground regulated by appropriate Environmental Permits and effects would not be significant, therefore would not constitute a statutory nuisance.
- 4.3.3 The CoCP provided as **Appendix 4.2** of the ES [TR020001/APP/5.02] sets out measures to avoid, reduce and mitigate potential effects during construction.
- 4.3.4 The Outline Operational Air Quality Plan (**Appendix 7.5** of the ES [TR020001/APP/5.02]), Drainage Design Statement (**Appendix 20.4** of the ES [TR020001/APP/5.02]), **Chapter 20** Water Resources of the ES [TR020001/APP/5.01] describe measures to avoid, reduce and mitigate potential effects during operation.

4.4 (e) Any accumulation or deposit which is prejudicial to health or a nuisance

- 4.4.1 Throughout the construction of the Proposed Development materials will be excavated, managed, treated where appropriate, and reused on-site. This includes virgin material, made ground, and material excavated from the historic landfill beneath Wigmore Valley Park. These operations would be managed through the application of measures described in various management plans and regulated under relevant regimes that are process dependent. These include:
- a. Excavation, storage, treatment and reuse and of the material from the landfill will be undertaken in accordance with the Remediation Strategy, and Outline of which is provided as **Appendix 17.5** of the ES [TR020001/APP/5.02]. The lead contractor will be required to prepare the final Remediation Strategy substantially in accordance with this Outline as part of the application for development consent. These activities will be regulated by the Environment Agency under the appropriate Environmental Permit.
 - b. All construction work would be undertaken in accordance with the CoCP (**Appendix 4.2** of the ES [TR020001/APP/5.02]).

- c. All earthworks outside the Permit for the landfill remediation would be undertaken in accordance with the Materials Management Plan required to be prepared by the lead contractor as part of the CoCP and approved by the relevant planning authority.
- d. Top and sub soil will be excavated and temporarily stored on site before reuse. This would be undertaken in accordance with the Soil Management Plan required as part of the CoCP and substantially in accordance with the Outline Soil Management Plan provide as **Appendix 6.6** to the ES [TR020001/APP/5.02].

4.4.2 Various environmental aspect assessment considered these activities, including **Chapter 17** Soils and Geology [TR020001/APP/5.01] which considers health impact of this materials handling, and none report significant adverse effects as a result. Therefore, this material handling would not constitute a statutory nuisance.

4.4.3 The Proposed Development has been designed with appropriate space for facilities within the airport to manage operational waste generation, segregation, management and offsite disposal. Therefore, there would be no accumulation that would constitute a statutory nuisance as a result of the Proposed Development.

4.5 (f) Any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance

4.5.1 The Proposed Development does include excavation, treatment and reuse of historic landfill material. However, the proposed plans and measures to manage this material as described in **Section 4.3** of this document will be in place and the site regulated in the same manner. Effective pest control is a requirement of the CoCP (**Appendix 4.2** of the ES [TR020001/APP/5.02]).

4.5.2 Extensive habitat enhancement and creation is included in the Proposed Development. This has been designed to provided healthy and diversity habitats and ensure a biodiversity net gain, and will be managed as described in the Outline Landscape and Biodiversity Management Plan (**Appendix 8.2** of the ES [TR020001/APP/5.02]) for 50 years.

4.5.3 Therefore, there would be no insect infestation that would constitute a statutory nuisance as a result of the Proposed Development.

4.6 (g) Noise emitted from premises so as to be prejudicial to health or a nuisance

4.6.1 EPA 1990 section 79(6) provides that subsection (1)(g) does not apply to noise caused by aircraft other than model aircraft. Noise arising from aircraft associated with the Proposed Development is therefore excluded.

4.6.2 As described in **Chapter 16** Noise and Vibration of the ES [TR020001/APP/5.01], noise would be generated during construction. The CoCP provided as **Appendix 4.2** of the ES [TR020001/APP/5.02] sets out Best

Practicable Means (BPM) measures as defined in section 72 of the Control of Pollution Act (Ref. 5) to avoid, reduce and mitigation potential effects during construction including, but not limited to:

- a. Noise and vibration control at source - for example, the selection of quiet and low vibration equipment used and maintained in accordance with manufacturers' instructions and switched off when not in use, drop heights of materials minimised, rubber linings in chutes and dumpers used to reduce impact noise, review of construction programme and methodology to consider quieter methods, location of equipment on site, control of working hours, the use of less intrusive alarms, such as broadband vehicle reversing warnings.
- a. Screening - for example, local screening of equipment or perimeter hoarding or enclosure of noisy activities.
- b. The recommendations of the British Standards Institution, BS 5228 Code of practice for noise and vibration control on construction and open sites parts 1 and 2 (Ref. 6) will be implemented.

4.6.3 During operation, noise will arise from ground operations and fixed plant of the Proposed Development.

4.6.4 The Proposed Development introduces new building infrastructure that screens receptors to the north of the Proposed Development from ground-based operational noise sources.

4.6.5 Fixed plant that may result in noise emissions are identified as follows:

- a. Electrical Substations.
- b. Fuel Storage Facility – located to the east of proposed earthworks and car parking.
- c. Water Treatment Facility – Located east of the Main Application Site in the area excavated as part of the earthworks.
- d. Solar Battery Storage – located to the directly north of car park P11.

4.6.6 This proposed fixed plant would be operated within noise limits, as defined in **Chapter 16** Noise and Vibration of the ES [TR020001/APP/5.01], derived from the background noise measurements at sensitive receptors identified in proximity to the proposed plant. Building services plant would be required to operate in accordance with the manufacturer's instructions and would not result in any noise which is tonal, impulsive or distinctive in nature, and would be further assessment and operated in accordance with BS 4142 (Ref. 7) to ensure that the resultant rating level falls within the limit levels identified. As such the permanent effect of operational building services noise would be not significant.

4.6.7 No significant construction or operational ground and fixed plant noise effects have been identified, therefore, there would be no noise that would constitute a statutory nuisance as a result of the Proposed Development.

4.7 (ga) Noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street

- 4.7.1 Section 79(6) provides that subsection (1)(ga) does not apply to noise made by traffic (amongst other things). Noise arising from traffic associated with the Proposed Development is therefore excluded.
- 4.7.2 During the construction of the Proposed Development, equipment/plant would be used temporarily in streets for the delivery of the Airport Access Road (ARR) and Offsite Highways Interventions (as described in **Chapter 4** The Proposed Development of the ES [TR020001/APP/5.01]).
- 4.7.3 Management and mitigation measures defined within the CoCP (as described above in **Section 4.6**) are deemed sufficient to prevent any significant noise effects. Therefore, there would be no noise emitted from or caused by a vehicle, machinery or equipment in streets that would constitute a statutory nuisance as a result of the Proposed Development.

5 CONCLUSIONS

- 5.1.1 This Statement identifies the matters set out in section 79(1) of the EPA 1990 in respect of statutory nuisances and considers whether the Proposed Development would engage one or more of those matters.
- 5.1.2 With the proposed mitigation in place, as described above, none of the statutory nuisances identified in section 79(1) of EPA 1990 are predicted to arise during the construction or operation of the Proposed Development.

GLOSSARY AND ABBREVIATIONS

| Term | Definition |
|-------------|--|
| ANPS | Airports National Policy Statement |
| BPM | Best Practicable Means |
| CoCP | Code of Construction Practice |
| CSWMS | Construction Surface Water Management Strategy |
| EIA | Environmental Impact Assessment |
| EMS | Environmental Management System |
| EPA 1990 | Environmental Protection Act 1990 |
| ERUB | Engine Run-up Bay |
| ES | Environmental Statement |
| FTG | Fire Training Ground |
| GPU | Ground Power Units |
| LLANAP | London Luton Airport Noise Action Plan |
| LLAOL | London Luton Airport Operators Limited |
| mppa | Million passengers per annum |

REFERENCES

Ref 1 Parliament of the United Kingdom. The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, (London, 2009)

Ref 2 Parliament of the United Kingdom, The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended), (London, 2017)

Ref 3 Parliament of the United Kingdom. The Environmental Protection Act 1990

Ref 4 Department for Transport (2018), Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England (June 2018)

Ref 5 Her Majesty's Stationery Office (1974), Control of Pollution Act.

Ref 6 British Standards Institution, BS 5228 Code of practice for noise and vibration control on construction and open sites parts 1 and 2 (BSI 2014)

Ref 7 British Standard Institute (2019), BS 4142:2014+A1:2019 Methods for rating and assessing industrial and commercial sound.