

CAA relevant representation to London Luton Airport Limited's March 2023 DCO application

Contents

Contents	2
Chapter 1 – Introduction and purpose	3
The CAA’s role as a statutory consultee under planning law	3
Structure of this response	3
Chapter 2 - The role of the Civil Aviation Authority with respect to LLAL’s DCO application	5
The role of the Civil Aviation Authority	5
Relevant approvals required from the CAA for the Development	6
Aerodrome Certification	6
Airspace Change	7
Air Traffic Service approval	8
Economic Regulation	8
Security	9
Other areas	10
Chapter 3 – CAA engagement with LLAL on its DCO	12
The CAA’s response to LLAL’s statutory consultation	12
Further engagement with LLAL	13
Chapter 4 – the CAA’s relevant representation on LLAL’s DCO application	14

Chapter 1

Introduction and purpose

- 1.1 The Civil Aviation Authority (CAA), in its capacity as a statutory consultee under planning law, welcomes the opportunity to provide a relevant representation to the Planning Inspectorate on London Luton Airport Limited's (LLAL) application for a Development Consent Order (DCO) to allow it to expand its airport operations.
- 1.2 The CAA has a number of statutory functions which are relevant to any scheme proposing to make best use of an airport's existing runway. We are using our relevant representation to LLAL's proposed development ("the Development") to provide clarity and transparency on the roles and responsibilities we are performing and will continue to perform with respect to LLAL's proposed expansion scheme.
- 1.3 Parts of LLAL's proposals for expansion will be subject to CAA regulatory processes and approval. Some of these regulatory processes are already under way and will continue throughout and beyond the DCO process (including after DCO consent, if granted, and during the construction phase).
- 1.4 We have engaged and will continue to engage with LLAL to understand its proposals for expansion insofar as they relate to our relevant regulatory roles and statutory functions and thus in our capacity as a statutory consultee.

The CAA's role as a statutory consultee under planning law

- 1.5 The CAA is prescribed as a statutory consultee in relation to applications for development consent made under the Planning Act 2008 and must be consulted on all such applications relating to an airport or which are likely to affect an airport or its current or future operation. We therefore respond to consultations and information from an applicant insofar as their application is relevant to our regulatory roles and statutory functions and we have comments to make.

Structure of this response

- 1.6 There is evidently a large volume of material submitted to PINS, much of which does not appear to be directly relevant to the CAA's regulatory roles and statutory functions. We have not reviewed all of the application documents published by PINS. We have focussed our attention on those areas which are within or are closely related to the CAA's areas of regulatory responsibility.
- 1.7 In the remainder of this representation, we set out:

- The role of the CAA as it pertains to LLAL's DCO application in Chapter 2
- Our engagement to date with LLAL on its DCO application in Chapter 3
- The CAA's relevant representations on the LLAL proposal in Chapter 4.

Chapter 2

The role of the Civil Aviation Authority with respect to LLAL's DCO application

The role of the Civil Aviation Authority

- 2.1 The Civil Aviation Authority (CAA) is a public corporation established by Parliament in 1972 as an independent specialist aviation regulator. As the UK's specialist aviation regulator, the CAA works so that:
- the aviation industry meets the highest safety standards;
 - consumers have choice, value for money, are protected and treated fairly when they fly;
 - through efficient use of airspace, the environmental impact of aviation on local communities is effectively managed and CO2 emissions are reduced; and
 - the aviation industry manages security risks effectively.
- 2.2 The CAA is the decision-making authority in relation to safety and airspace approvals, particularly in relation to any Airspace Change Proposals (ACP), Air Traffic Control approval, Airport Security and the Aerodrome Certification Process:
- Airspace: the CAA considers and decides on airspace change proposals that are submitted to it, taking into account a range of factors set out in s.70 of the Transport Act 2000 including safety, the needs of users of airspace and environmental impacts.
 - Air Traffic Control: Civil Air Traffic Services (ATS) and technical elements of associated services are principally regulated in the UK by the CAA. Regulation is achieved, as appropriate, through the grant of approval to equipment and systems, licensing and certification of personnel and through the auditing and inspection of the subsequent systems and service provision.
 - Aerodrome Certification: the CAA regulates all UK airports to ensure they comply with relevant international and UK safety standards and Aviation Security. Certification under the CAA satisfies UK aviation operational, safety and security requirements

Relevant approvals required from the CAA for the Development

- 2.3 Operations at Luton Airport must be in accordance with the following approvals relevant to the application:
- Aerodrome Certification – London Luton Airport Operations Limited (LLOAL) holds an aerodrome certificate in accordance with ADR.AR.C.035 'Issuance of certificates' of Commission Regulation (EU) No 139/2014; and Article 212 of The Air Navigation Order 2016 (ANO) and Regulations. Approval of any changes affecting infrastructure or management system is required from the CAA in relation to this licence;
 - Airspace Change - permission for a change in the design of airspace and how it is used safely in accordance with the CAA's CAP 1616 (Airspace Design: Guidance on the Regulatory Process for changing airspace design including community engagement requirements);
 - Air Traffic Service approval - where a certificated Air Traffic Service Provider provides services in accordance with Article 8(1) Regulation. 550/2004, the Service Provision Regulation, and Regulation 4 of the Single European Sky (Functions of the National Supervisory Authority) Regulations 2006.
- 2.4 In addition, operations at an airport will also have to be conducted in compliance with the following legislation:
- Aviation Security Act 1982, Aviation and Maritime Security Act 1990, Policing and Crime Act 2009, Regulation (EC) 300/2008 of the European Parliament and of the Council;
 - The Civil Aviation Act 1982 and 2012;
 - The Airports Act 1986; and
 - The Civil Contingencies Act 2004.

Aerodrome Certification

- 2.5 LLOAL, as the operator of a CAA certified aerodrome, is required by UK Regulation (EU) 139/2014 to seek prior approval from the CAA of impending changes affecting its infrastructure or management system. This requires a formal application to the CAA. The CAA's guidance document CAP 791 sets out the process to be followed and there is accompanying acceptable means of compliance and guidance material in this regard.
- 2.6 The Aerodrome Certificate application will require LLOAL to submit details of how it intends to satisfy all of the operational requirements laid down in UK

Regulation (EU) 139/2014 affected by the Development including, but not limited to, the following:

- Aerodrome Physical Characteristics
- Lighting
- Operational Procedures
- Rescue and Firefighting
- Integrated Emergency Planning
- Air Traffic Services
- Communications and Navigation Aids
- Safety Management System
- Security Management Systems
- Work in Progress
- Managing obstructions
- Maintenance
- Environmental Management

2.7 Submission by the applicant of CAA Form 2011 will begin the CAA's formal process in assessing the proposed changes.

Airspace Change

2.8 The CAA has two separate but related roles concerning airspace. First, we are directed by the Secretary of State to develop a strategy and plan for the use of all UK airspace for air navigation up to 2040, including for the modernisation of such airspace. Our approach to this is detailed in our Airspace Modernisation Strategy (AMS), which is set out in CAP 1711. Second, the CAA makes decisions on airspace change proposals¹. Change sponsors are required to follow our airspace change proposal (ACP) process, which is set out in CAP 1616 before submitting a proposal to us for decision. Our airspace functions are carried out in such a way as to give effect to our AMS subject to our statutory functions and duties.

¹ Proposals to change the design of airspace and/or how it is used safely.

Air Traffic Service approval

- 2.9 The CAA is responsible for safety oversight of all aspects of the Air Navigation Service Provider's (ANSP) operations and organisation. ANSPs are required to comply with the requirements in UK Regulation (EU) 2017/373 and this includes requirements for the ANSP to utilise Safety Management, Quality Management and Security Management systems all of which are subject to regular audit by the CAA.
- 2.10 ANSPs are required to notify the CAA of planned changes to their provision of air navigation services which may affect their compliance with the applicable common requirements or conditions of their certification.
- 2.11 The solution (people, procedures, equipment and facilities) enabling service provision at an expanded Luton will be the subject of an integrated suite of safety assurance (based on safety cases) and this will be subject to approval by the CAA. The CAA will audit the safety assurance process against the ANSPs' safety management systems.
- 2.12 ANSPs are required to apply to the CAA for approval of changes to their functional systems (eg. incorporating new ATCO procedures) and for the approval of Air Traffic Services Equipment (Article 205 Air Navigation Order 2016).
- 2.13 Form SRG 1430 will formally initiate the change process in relation to UK Regulation (EU) 2017/373. A separate application will be required for approval of the Air Traffic Services Equipment.

Economic Regulation

- 2.14 Under the Civil Aviation Act 2012 the CAA is the economic regulator for airports that the CAA has concluded have substantial market power, currently Heathrow and Gatwick, and issues economic licences that typically contain price controls and other conditions. Our price controls and related conditions are reviewed regularly, typically at intervals of between four and seven years. When carrying out our economic regulation functions, our primary duty is to further the interests of passengers and cargo owners regarding the range, availability, continuity, cost and quality of airport operation services. We also have secondary duties including (among others) having regard to the need for licensees to be able to finance their licensed activities, to secure that all reasonable demands for airport operating services are met, to promote economy and efficiency, and to allow licensees to take reasonable measures to reduce, control or mitigate the adverse environmental impacts of the airport.
- 2.15 We identify airports with substantial market power through a market power determination, where we assess whether the airport operator meets the market

power test in section 7 of the Civil Aviation Act 2012 (CAA12).² This test consists of three parts, all of which must be met if the airport operator is deemed to have met the market power test:

- a) that the airport operator has, or is likely to acquire, substantial market power in a market, either alone or taken with other such persons as the CAA considers appropriate;
- b) that competition law does not provide sufficient protection against the risk that the airport operator may engage in conduct that results in an abuse of the substantial market power; and
- c) that, for users of air transport services, the benefits of regulating the airport operator by means of a licence are likely to outweigh the adverse effects.

2.16 While we are required to keep under review the provision of airport operation services in the United Kingdom³, we are not required to make market power determinations for all UK airports or to make market power determinations at regular intervals. We may, however, make a market power determination whenever we consider it appropriate to do so, or may be required to make one in response to a request from airport operators or another person whose interests are likely to be materially affected by the determination (this would currently be the case for Luton airport if we received such a request).⁴

2.17 The CAA is also responsible for enforcing the Airport Charges Regulations 2011, which place non-discrimination, consultation (including on major infrastructure projects) and transparency obligations on airports serving over five million passenger a year.⁵

Security

2.18 The CAA has been responsible for aviation security regulatory activity and compliance monitoring since 1 April 2014, when these functions transferred from the Department for Transport (DfT). The respective present roles of the DfT and CAA in the aviation security field are documented in CAP 1381, a Memorandum of Understanding and its annexed Statement of Responsibilities.

² We published guidance on our application of the market power test at [REDACTED]

³ Under section 64 of CAA12.

⁴ In cases where we receive a request from an interested party to make a market power determination for an airport which served more than five million passengers in the previous calendar year on which we have not previously made one, then we are required to make a market power determination for that airport.

⁵ Due to the effects of covid on airport volumes and the volume criteria applying two years prior to the current year, the regulations do not apply to Luton Airport in 2023 but will do again in 2024.

- 2.19 While the Government leads on international aviation security matters and UK aviation security policy (including the setting of security standards), the CAA regulates security arrangements at UK airports and for air carriers, cargo and in-flight suppliers to ensure that the relevant entities comply with UK and international security requirements. CAP 1550 gives an overview of our responsibilities, the most relevant of which for DCOs are:
- Compliance and enforcement - the CAA appoints authorised persons (i.e. Auditors) to carry out observations, inspections, audits and tests, and takes enforcement action if necessary (s.24A(1) of the Aviation Security Act 1982);
 - Advice and assistance to other persons - the CAA provides advice and assistance to those persons listed in subsection (3) of new s.211 of the ASA 1982 (e.g. managers of UK aerodromes and operators of aircraft registered or operating in the UK) as the CAA considers appropriate, having regard to the purposes to which Part 2 of the ASA 1982 applies (new s.211 of the ASA 1982).
- 2.20 Therefore, for airport expansion projects, applicants do not require an approval from the CAA in relation to security in order to proceed. However, during the construction phase and once expansion is achieved, their operations will be expected to meet all the relevant security regulations set out by Government. These operations will be subject to a CAA audit and, if found not to be compliant will be subject to enforcement action under ASA 1982.
- 2.21 In relation to aviation security, it should be noted that it is important that security managers work closely with project managers and designers to ensure that the relevant threats and risks are understood, and the right security outcomes are delivered through design. Guidance to airport operators is offered in the DfT publication 'Aviation Security in Airport Development 2017'. We would expect applicants to be engaging with its CAA Lead Auditor on the likely changes after the Development and during the construction phase to gain some comfort that it will be compliant.

Other areas

Noise

- 2.22 The CAA has three key roles in relation to aviation noise:
- Deciding whether or not to accept any proposal to change airspace design (developed under our CAP 1616 process) in accordance with UK law and noise policy. Detailed information is available on our airspace change pages. This is a statutory function. The Department for Transport gives us some guidance as how to take account of any environmental impacts in airspace change decisions;

- Monitoring noise around some UK airports and publishing information about noise levels and impact. We do this for a range of paying customers including the UK Government, airport operators, airspace change proposers and local authorities. This is a non-statutory function.
- Collaborating on and reviewing research into the effects of noise and how they can be mitigated, and offering advice to Government on these effects.

2.23 The CAA does not make decisions about the amount of noise that is considered damaging or a nuisance for people, nor does it make decisions about particular plans for airports, such as expansions. Further, CAP 1616 and the Air Navigation Guidance 2017 do not place any requirement on the CAA in terms of regulating noise on the ground at airports.

Carbon emissions

2.24 The CAA follows government policy and guidance on carbon emissions and air quality in making decisions about airspace change. It has a role in advising the government on the reduction of the industry's carbon emissions, the sharing of best practice, and the development of international initiatives such as emissions trading which is designed to address climate change.

2.25 The CAA also has a general duty to publish information on the adverse effects of aviation on the environment (CAA Act 2012, s.84)⁶. The CAA does not make decisions about the amount of carbon emission appropriate for particular plans for airports, such as expansions.

⁶ See [REDACTED]

Chapter 3

CAA engagement with LLAL on its DCO

- 3.1 LLAL first engaged with the CAA on its proposed expansion at a meetings taking place on 28 June 2019. There were subsequent meetings, followed by a hiatus during the covid-19 pandemic. After an update meeting in November 2020, regular meetings between the CAA and LLAL began again in April 2021.
- 3.2 In March 2022, the CAA responded to LLAL's statutory consultation and its response was published as CAP 2336. The next section summarises our response.

The CAA's response to LLAL's statutory consultation

- 3.3 The CAA reviewed LLAL's consultation documents from the point of view of its duties and expertise. Its response covered:
- Aerodrome safety
 - Airspace
 - Noise
 - Carbon emissions
 - Other aspects – accessibility, security and economic regulation
- 3.4 On aerodrome safety, we had no comments to make further than the engagement which was already happening with LLAL on its proposal.
- 3.5 On airspace, we considered that there was some tension between statements in the consultation material, as on the one hand LLAL stated that the DCO itself does not "directly require" changes to flightpaths over the ground but LLAL also appeared to indicate that airspace modernisation will, to some extent, enable the growth envisaged through the scheme. We were not aware of any evidence within the consultation documents to conclude that the projected increase in air traffic movements as proposed by the DCO can be accommodated within the existing airspace structure, and were not in a position to comment on or verify, or otherwise, those assertions in the absence of any evidence from LLAL to support them.
- 3.6 Further, we noted that the airspace modernisation programme was at an early stage and it was not possible to say with any certainty what trade-offs might be needed to resolve a conflict between the sponsors of separate airspace changes, or between different objectives (such as achieving noise reduction, fuel efficiency or additional capacity), and therefore what benefits individual airports

might achieve from airspace modernisation. In addition, we noted that any airspace change proposals intended to deliver airspace modernisation will be subject to the CAA's separate regulatory decision-making process for individual airspace change decisions under CAP 1616.

- 3.7 On noise, we made some technical comments on noise measurement and calculation and suggested some extra sensitivity analysis could be undertaken.
- 3.8 On carbon emissions, we sought some clarity on how LLAL had responded to PINS' scoping consultation and could consider including emissions up to 2050 in its submission.
- 3.9 On accessibility, we noted that LLAL should show where it had taken into account the requirements of disabled people in its designs, complying with UK Reg (EC) 1107/2006, Section 5.10 (Airport Design) of ECAC Doc Part 1 and the CAA's guidance in CAP 1228.
- 3.10 On economic regulation, we noted that, whilst Luton airport is not currently subject to an economic licence from the CAA, it is possible that in the future it could be, if it was deemed to pass the tests set out in the Civil Aviation Act 2012, and that in any case it was subject to the Airports Charging Regulations 2011.
- 3.11 On security, we noted that it is important that security managers work closely with project managers and designers to ensure that the relevant threats and risks are understood and the right security outcomes are delivered through design. Guidance to airport operators is offered in the Department for Transport publication 'Aviation Security in Airport Development 2017'.

Further engagement with LLAL

- 3.12 Following the CAA's response, LLAL engaged further with the CAA on the topics which we had highlighted in our response.
- 3.13 These meetings and the subsequent dialogue have informed our representation.

Chapter 4

The CAA's relevant representation on LLAL's DCO application

- 4.1 The CAA has reviewed the documents from LLAL's DCO application which it believes to be relevant to its duties. As noted above, LLAL has also engaged with the CAA following its statutory consultation. The CAA therefore considers the following.
- 4.2 On **Aerodrome certification**, we have no principal areas of disagreement at this stage.
- 4.3 On **Airspace**, it is still the case that it is too early in the Airspace Modernisation programme to say what trade-offs will be required to resolve any conflict between the sponsors of separate airspace changes, or between different objectives. Therefore, it is also too early to say what benefits individual airports might achieve from airspace modernisation, whilst recognising that one of the goals for the AMS is to provide greater capacity overall. However, we have no principal areas of disagreement at this stage.
- 4.4 On **Security**, we have no further comments other than to note the CAA's duties and no principal areas of disagreement at this stage.
- 4.5 On **Economic regulation**, we have no further comments other than to note the CAA's duties and no principal areas of disagreement at this stage.
- 4.6 On **Noise**, we are content with answers provided by LLAL since consultation on the points we raised in the statutory consultation and have no principal areas of disagreement at this stage.
- 4.7 On **Carbon emissions**, we are content with answers provided by LLAL since consultation and consider that other parties to the DCO are likely better placed than CAA to comment on this area. Therefore, we have no principal areas of disagreement at this stage.
- 4.8 On **Accessibility**, LLAL has informed us that these matters will be considered at the detailed design stage. Therefore, we have no principal areas of disagreement at this stage.
- 4.9 Consequently, the CAA has no principal areas of disagreement to report to PINS as part of this relevant representation.