

## LADACAN (20040757) submissions on Examination Procedure (Agenda Item 3)

### Inclusion of 'Project Finance' as a Principal Issue

We and others have raised concerns in RRs relating to uncertainty over how the proposed DCO project would be financed should permission be granted.

The latest draft of the Order refers to London Luton Airport Ltd as the statutory undertaker, but it is not clear which body would ensure finance is available to deliver the entire project, and Section 8 of the Draft Order provides for possible transfer benefits to other parties.

Section 9 of the draft Order mentions "Economic effects", which presumably could include possible economic effects on the statutory undertaker. The Applicant is heavily indebted to the Public Works Loan Board via loans from Luton Borough Council, and adverse economic impact on it as statutory undertaker may affect the financial viability of the Council itself.

Concerns have been raised by the Council's auditors Ernst & Young about the treatment of airport-related costs in respect of its 2018-19 accounts which are not signed off.

Members of the public, auditors and some Luton Councillors have long been troubled by an apparent lack of transparency over airport-related financial decision making in the Council. Given the significance of this project, and lack of definiteness in the Funding Statement (APP-012), it would be appropriate for there to be utmost clarity on this issue.

It may be that the ExA already intends it to be covered as part of Issue 5 covering the draft Development Consent Order and adequacy of security for project delivery. If not, then we respectfully request that the 'Project Finance' topic be included in the Principal Issues list.

### Inclusion of 'Governance' as a Principal Issue

The Airports Act 1986 includes provisions in its Section 17 (see Annex A below) under the heading "Control over the constitution and activities of public airport companies", requiring the controlling authority (in this case Luton Borough Council) of a public airport company (in this case Luton Rising) to exercise their control over the company in particular ways.

Our Relevant Representations touch on governance concerns over whether the provisions of Section 17 have been correctly observed, since the Board of Luton Rising was and is still not qualified under the Act to manage or actively influence the management of an airport, yet it funded financial incentives for accelerated growth, and planning conditions were breached.

The Funding Statement (APP-012) includes the option of Luton Rising becoming the Airport Operator, in which case Section 17A may apply. In any case this option raises governance concerns since the Luton Rising Board is comprised of Members and employees of Luton Borough Council; the Council has provided substantial PWLB loans to Luton Rising to fund the DCO application and the DART; the Council is and would be a financial beneficiary of the Airport operation; yet the Council would ultimately oversee Green Controlled Growth.

We therefore respectfully request that 'Governance' be included as a Principal Issue.

## Annex A – Section 17 of the Airports Act 1986 (as amended)

### **17 Control over constitution and activities of public airport companies.**

(1) Subject to subsection (2), it shall be the duty of the controlling authority of a public airport company to exercise their control over the company so as to ensure that at least three of the directors of the company, or at least one-quarter of their number (whichever is less), are full-time employees of the company who are suitably qualified to act as directors of the company by virtue of their experience in airport management.

(2) Where at any time it appears to the Secretary of State—

(a) that a public airport company has made arrangements for the management of the airport operated by it to be carried on otherwise than through its officers or employees, and

(b) that any such arrangements are adequate to secure that those participating in the management of the airport under the arrangements are suitably qualified to do so by virtue of their experience in airport management,

the Secretary of State may direct that subsection (1) shall not apply in relation to that company.

(3) Any direction given by the Secretary of State under subsection (2) may provide—

(a) that it is to have effect only for such period, or in such circumstances, as may be specified in it, or

(b) that its continuation in force is to be subject to compliance with such conditions specified in it as the Secretary of State thinks fit.

(4) It shall be the duty of the controlling authority of a public airport company to exercise their control over the company so as to ensure that the company does not—

(a) engage in activities in which the controlling authority have no power to engage, or

(b) permit any subsidiary of the company to engage in any such activities.

(5) Where the controlling authority of a public airport company are a composite authority, the duties imposed by subsections (1) and (4) are joint duties of both or all of the constituent councils of that authority; and subsection (4) shall apply in any such case as if it referred to activities in which none of the constituent councils have power to engage.

**[F1**(6) In subsection (4)—

(a) paragraph (a) does not apply in relation to any activity which is a permitted activity in relation to the company by virtue of regulations under section 17A, and

(b) paragraph (b) does not apply in relation to any activity which is a permitted activity in relation to the subsidiary by virtue of any such regulations.]

**[F1 17A Additional activities of public airport companies**

(1) The Secretary of State may by regulations provide for any activity specified in the regulations to be a “permitted activity” in relation to—

- (a) a public airport company, or
- (b) a subsidiary of a public airport company,

for the purposes of section 17(6).

(2) Any activity so specified must be an activity which appears to the Secretary of State to be incidental to, or connected with, carrying on the business of operating an airport as a commercial undertaking.

(3) Regulations under this section may provide for an activity to be a permitted activity only if—

- (a) it is carried on in such countries or territories as are specified in the regulations;
- (b) any conditions as are so specified are complied with.

(4) Such conditions may include, in particular, conditions requiring agreements relating to the provision of services in the carrying on of the activity to include provision for the payment of proper commercial charges in respect of those services.

(5) Regulations under this section may be made so as to apply to—

- (a) public airport companies or subsidiaries of such companies generally;
- (b) public airport companies of a particular description or subsidiaries of any such companies;
- (c) a particular public airport company;
- (d) subsidiaries, or a particular subsidiary, of a particular public airport company;

and may make different provision for different cases.

(6) For the purposes of this section—

- (a) “activity” includes one that involves participating in, or making financial contributions towards, an activity carried on by, or jointly with, other persons; and
- (b) “airport” is not limited to one operated by a public airport company.

(7) This section applies only in relation to—

- (a) public airport companies which are subsidiaries of controlling authorities in England or Wales, or
- (b) subsidiaries of such companies.]

Submission ID: 19528

Agenda Item 3: I have submitted a Written request regarding two additional Principal Issues and be available to speak should the ExA wish to explore the request in more detail.