Written Representation from LADACAN 22 Aug 2023 (IP ref 20040757)

Contents

Note explaining supporting references and documentation

This WR makes supporting references to documents in the Library of the 2022 Planning Inquiry (PINS ref APP/B0230/V/22/3296455) into the called-in decision by Luton Borough Council to permit 19mppa and increased noise contours at Luton Airport (planning ref 21/00031/VARCON).

LADACAN's Proof of Evidence ("LPoE") to the 2022 Inquiry is appended as Appendix 1 of this WR. The 2022 Inquiry Library can be accessed by pasting the link provided below into a browser:

https://gateleyhamer-pi.com/en-gb/luton-airport/library-documents/

References in this Written Representation and its Appendix 1 should be interpreted as follows:

a) References to 2022 Inquiry documents can be found in sub-folders on the above link thus:
   - those prefixed "CD" are in the relevant Core Documents sub-folder
   - those prefixed "INQ" are in the "Other Documents Submitted During Inquiry" sub-folder
   - those prefixed "APP-W2.1" are in the "London Luton Airport Operations Ltd" section of the "Proofs of Evidence and Associated Documents" sub-folder of the 2022 library
b) Any other references prefixed "APP-" or "AS-" relate to the library of this Examination

Glossary

19mppa application	Application 21/00031/VARCON on the LBC Planning Portal – submitted by LLAOL to LBC to further increase noise contour limits and the passenger cap
2022 Inquiry	Planning Inspectorate Inquiry (ref APP/B0230/V/22/3296455) into the called-in decision by LBC to grant the 19mppa application
ANEG	Department for Transport 'Aviation Noise Engagement Group'
Applicant	Luton Rising (London Luton Airport Ltd), whose Board until recently comprised solely of Members and Officers of LBC
Application	This application TR020001 for a Development Consent Order
LBC	Luton Borough Council, ultimate owner of and Local Planning Authority for LLA
LLA	London Luton Airport
LLAOL	London Luton Airport Operations Ltd, the operator of LLA under a concession agreement with the Applicant
mppa	'million passengers per annum': a measure of an airport's passenger capacity or actual passenger throughput
NATS	National Air Traffic Services
noise contour	An outline on a map enclosing an area in which the 8-hour or 16-hour logarithmic average of aircraft noise for an average day in a defined 92-day summer period equals or exceeds a given value
Project Curium	Application 12/01400/FUL on the LBC Planning Portal – submitted by LLAOL to LBC in 2012 for development works to increase LLA capacity to 18mppa by 2028

0 Overarching Principal Issues

0.1 Disagreement in principle regarding development approach

1. We fundamentally disagree with the timing of this Application prior to delivery of the mitigations necessary to make its predecessor Project Curium acceptable in planning terms[1].

2. We also fundamentally disagree with the way that public money has been spent on development work and provisions facilitating the commercial objective of this Application (namely the increase in capacity at Luton Airport to 32mppa) prior to proper permission for that objective having been sought and obtained.

3. Luton Airport achieved 18mppa in 2019 without the use of DART, and the investment of public money in DART makes no commercial sense in RoI terms for an 18mppa operation, but only as a facilitator for access to a second Terminal, for which permission had not been granted prior to the investment in DART.

4. Were the Application to be permitted, it would signal that developers are free to take the commercial benefits of a given bounded development and then proceed to further development under new permission on the same site, without first completing necessary remedial or mitigation works committed to as part of the original development permission.

5. Were the Application to be permitted, it would also signal that a Council is free to permit development works and other arrangements to be undertaken by its own subsidiary run by its own Members, which facilitate an NSIP objective, without having obtained permission for such an NSIP.

0.2 Undelivered mitigations

6. We fundamentally disagree that a DCO is appropriate part-way through a planning development (Project Curium) at a site (LLA) where the developer (LLAOL) and the site owner (the Applicant on behalf of LBC) have taken commercial benefits ahead of time through non-consented accelerated growth, but planning limits governing the consented operation of the site have been ignored and mitigations remain outstanding.

7. Project Curium has not yet delivered the following:

    a) completion of a new taxiway feeding the east end of the runway, which would reduce air noise

    b) modernisation of the fleet to a point where it can deliver 18mppa while remaining within the consented long term noise contours (ie the reduced values specified in current Condition 10)

    c) installation of noise insulation in the properties eligible for insulation under the current scheme

    d) any other changes to airspace design and operating procedures necessary to achieve the long-term reduction in noise contour values and a reduction in unnecessary emissions

0.3 Advance development

8. The developments proposed in this Application have already been prepared for by 'facilitating permissions' granted by LBC's planning department to the Applicant – for example the New Century Park project (now dubbed Green Horizons) including a long-term lease of Wigmore Park to the Applicant; and the investment in the DART cable-railway.

9. Lack of transparency is also a wider concern: for instance a lack of minutes of pre-Application meetings with LLA representatives undermines confidence in the approach to planning; a refusal to provide information or board minutes relating to Luton Rising on grounds of commercial sensitivity;

[1] See Appendix 1 paragraph 37

misinformation about the time frame for Project Curium; behind-the-scenes influence being exerted by the Applicant over management of LLA when the Applicant is not qualified under Section 17 of the Airports Act 1986 to manage an Airport.

10. The guidelines produced by the Committee for Standards in Public Life on identifying and resolving conflicts of interest particularly in the case of commercial companies owned by Local Authorities are pertinent but were not apparently being followed by LBC during the lifecycle of Project Curium.

0.4 Justification of Need

11. The Need for the Application should be assessed by contrasting socioeconomic and other benefits weighed against effects on the environment and living conditions for the Do Minimum and Do Something outcomes, yet we see no evidence of an assessment in which the relentless increase in LLA's environmental impacts are paused until it has delivered the mitigations which could contribute to it becoming less unsustainable.

12. A Do Minimum option clearly exists: there are forecasts for flights and fleet modernisation in this scenario, and the runway and existing Terminal can support at least 18mppa and, with Phase One work to enhance the Terminal as described in the Need Case, potentially 21.5mppa (AS-125 Table 4.1 PDF p17/79).

13. Insets 12.1 and 12.2 in Appendix 16.1 (AS-096 PDF p249/250) show noise reducing again over time for Do Minimum as fleet modernisation continues, and further noise mitigation and reduction of emissions is available through airspace modernisation which is expected by around 2030. As LLA continues to bounce back from COVID, a "mitigate first" approach would return LLA to a more balanced trajectory, in accordance with policy, and redressing the imbalance between socioeconomic benefits and environmental harms which the Applicant has driven since 2014, yet this option is not explored and assessed in the Application.

14. Section 16.3.12-13 of the Non Technical Summary (APP-165) show that by 2027 when Assessment Phase 1 is delivered, noise would be worse for residential receptors with the Proposed Development and noise insulation would not have been rolled out. The comparison to 2019 Actuals to justify this is inappropriate since 2019 operation was non-consented. Such Proposed Development would be unbalanced growth ahead of mitigation, worsen the residential amenity of affected communities, and therefore be against policy.

1 Air quality and odour

15. LADACAN frequently hears from people living close to the Airport who report the odour of aviation fuel. This is an issue mentioned in RRs from members of the public. Furthermore, concerns have been expressed by researchers as to the effects and spread of ultrafine particulates from airports.

16. Research suggests long-term exposure to kerosene vapour can cause health harms[2], and with housing in the close vicinity of the Airport it would be reasonable to expect the Applicant to have considered the

[2] See for example:
1) "A review of health effects associated with exposure to jet engine emissions in and around airports", BMC (part of Springer Nature), Feb 2021, which can be accessed at https://ehjournal.biomedcentral.com/articles/10.1186/s12940-020-00690-y
2) "Public health impact of large airports" by the Aviation Environment Federation, which can be accessed at https://www.aef.org.uk/downloads/PublicHealthImpactsSummary.pdf
3) "Source apportionment of particle number size distribution in urban background and traffic stations in four European cities" by King's College London, Jan 2020, which can be accessed at https://www.sciencedirect.com/science/article/pii/S016041201931832X

effects of kerosene odours from aircraft on the ground and in low flight, or from fuelling operations and the charging of fuel bowsers.

17. Whilst a list of odorous substances associated with the proposed earthworks is reviewed in the Details Risk Assessment (APP-123), we cannot locate a risk- assessment of the long-term effects of exposure to kerosene odours, yet with some 70,000 additional flights per year by 2043 such pollution would clearly be increasing.

18. Our concerns also extend to staff onsite at the Airport, particularly those working airside and liable to be regularly exposed to higher concentrations of kerosene fumes and ultrafine particulates, and we respectfully request the ExA to examine whether the Application specifies adequate provisions for their health and safety at work, as well as for the health of nearby residents, in these respects.

2 Biodiversity

19. We oppose the destruction of a large part of Wigmore Valley Park to build additional carparks and a second Terminal with aircraft stands, since it would reduce biodiversity. The Park is a mature site with an evolved ecology, deserving a level of protection appropriate for its status as a County Wildlife site and an Asset of Community Value. We return to this in section 9.2 below.

3 Climate change and greenhouse gas emissions

3.1 Flightpath to the Future (May 2022)

20. Flightpath to the Future states at the bottom of printed page 7 over to page 8:
"We continue to be supportive of airport growth where it is justified, and our existing policy frameworks for airport planning provide a robust and balanced framework for airports to grow sustainably within our strict environmental criteria. They continue to have full effect, as a material consideration in decision-taking on applications for planning permission. The Government is clear that the expansion of any airport must meet its climate change obligations to be able to proceed."

21. We contend that airport expansion must therefore pass the tests of being justified, sustainable and meeting climate change obligations – for which, as in other impact areas – the principle of cumulative effects suggests that increased emissions from each of several airport expansion proposals cannot be considered only in isolation.

22. It will not have escaped the ExA's attention that the greenhouse gas emissions from the Airport business operation, which the Application claims will reduce to net zero by 2040, are a tiny fraction (currently around 3%) of the total greenhouse gas emissions associated with the Airport and the Application due to aircraft in flight.

3.2 Climate Change Committee (2023)

23. The Climate Change Committee issued its 2023 progress report to Government in June[3]. Its key messages included *"The Government must act urgently to correct the failures of the past year and reclaim the UK's clear climate leadership role."*

24. The CCC's recommendations for aviation include:

- No airport expansions should proceed until a UK-wide capacity management framework is in place to annually assess and, if required, control sector GHG emissions and non-CO2 effects.

[3] The Climate Change Committee 2023 Letter and Report can be downloaded from: https://www.theccc.org.uk/publication/letter-2023-progress-report-to-parliament-to-rt-hon-prime-minister/

- After a framework is developed, there should be no net airport expansion unless the carbon-intensity of aviation is outperforming the Government's emissions reduction pathway and can accommodate the additional demand.
- Continue innovation and funding for aircraft efficiency measures, hybrid, full electric and hydrogen aircraft development and airspace modernisation.
- Demand-mitigation measures should be used to address price imbalances between aviation and low-emission forms of surface transport (eg rail travel).
- Taxes should send clearer signals to consumers on the high emissions cost of flying (eg by reversing the 2021 cut in Air Passenger Duty).
- Fair funding mechanisms should be used to ensure alternatives are affordable (eg invest in low-emission alternatives for journeys where domestic flights are faster/cheaper than surface transport).
- Fiscal policy should be used (eg taxation, quotas or a frequent flyer levy), alongside improvements in broadband, to embed positive behaviours that have arisen during the pandemic, replacing business travel with videoconferencing and online collaboration.
- The price of flying should be raised to the point that it acts as an effective signal to consumers that aviation has high emissions costs.
- Start to track the carbon-intensity of, and demand for, different aviation ticket types (e.g. business, first class, economy class), and demand for private flying, to help understand how demand-side measures could reduce the carbon intensity of flying.
- Confirm when the Jet Zero Strategy will undergo its first five-yearly review and begin work in 2023 to understand what policy framework or mechanism would need to be in place for additional measures within the sector to be rapidly deployed in the late-2020s if the Government is not on track to meet its aviation pathway. These measures could include demand reduction policies.
- Continue to monitor seat occupancy over the period to 2027, during recovery from the COVID-19 pandemic, to ensure that the sector either returns to prior occupancy levels or routes are adjusted to account for low occupancy rates. Consider regulating aircraft occupancy standards if the trends do not return to pre-pandemic levels by 2024.
- Start monitoring non-CO_2 effects of aviation – including through the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) for eligible aeroplane operators – and set a minimum goal of no further additional warming after 2050 from non-CO2 effects, research mitigation options and consider how best to tackle non-CO2 effects alongside UK climate targets without increasing CO_2 emissions.

25. This Application is not in accord with the first two items of the CCC advice, and does not include sensitivity testing for the effects of measures including policy changes which may reduce demand, particularly on the financial viability of the proposed development.

3.3 The Jet Zero Strategy (Jul 2022)

26. The Jet Zero Strategy ("JZS") was published by the Government in July 2022 with the aim of providing *"our framework and plans for decarbonising aviation."* (See end of footnote to paragraph 1.1)

27. JZS describes various theoretical pathways to achieving net zero aviation, with the so-called 'High Ambition' pathway representing the Government's favoured option. Although it identifies six "policy measures" they are generally targets and aspirations and surprisingly short of actual policies. The panel showing "Our policy measures" on JZS printed page 26 can be summarised as:

System efficiencies is an ambition for airport operations to be net zero by 2040, and funding for Stage 2 airspace change proposals[4]
Sustainable aviation fuels are described as a leadership opportunity, supported by funding, with a mandate by 2025 and a target of 10% SAF in the fuel mix by 2030[5]
Zero emission flight describes a potential, with an aspiration and some research funding
Markets and removals sets an aim of legislation by 2024 and enhancement to the ETS
Influencing customers was a Call for Evidence about preserving the ability to fly while supporting sustainable choices
Addressing non-CO_2 is a focus on increasing understanding

It is difficult to identify any of this as enacted policy which can be relied on for precautionary modelling.

28. The Applicant's ES Chapter 12 Greenhouse Gases document (APP-038) treats the so-called High Ambition scenario as effectively representing UK aviation policy and we disagree with that approach. As just one example, under item 4: Next Generation Aircraft on printed page 66 of APP-038, it states: *"However, for this GHG assessment the future rollout of these aircraft has been assumed within the GHG Core Planning Case due to their explicit inclusion as an assumption within the Jet Zero Strategy High Ambition scenario that represents current UK Government policy on aviation."*

29. We also disagree with the final sentence in APP-038 para 12.1.14 where it states: *"The Jet Zero Strategy considers measures such as the national mandate to introduce Sustainable Aviation Fuels (SAF) into aviation fuel supply, and the introduction of next generation aircraft which are currently not available but in development. Initiatives and programmes in these areas are outside the control of the Applicant or scope of the application for development consent. However, as the Jet Zero Strategy demonstrates, they represent committed targets in government policy and legislation and can be relied upon as such."*

30. In both the above cases a distinction should be drawn between - on one hand - the setting of targets and trajectories for how the Government would like aviation decarbonisation to proceed and - on the other - the creation of policies which can be relied on to deliver these outcomes.

31. While measures such as a Sustainable Aviation Fuels mandate are being considered, no such mandate has yet been set. Likewise, we are not aware of any policy proposals for increasing the rate of efficiency improvement in aircraft; this is simply assumed in the modelling to occur.

32. It is also important to note that the modelling of emissions reductions in the High Ambition scenario, which the Applicant has apparently applied to reduce future emissions from an expanded LLA, are described by the Government as "illustrative scenarios" rather than fixed policies or even fully costed forecasts.

33. The analytical annex to the JZS notes that: *"There is significant uncertainty surrounding the abatement potential, uptake and costs of the measures described in this document and therefore these scenarios present illustrative pathways rather than forecasts"*

34. The Applicant has not evidenced any other pathway by which these High Ambition improvements would take place, therefore its assessment lacks credibility and would appear to be over-optimistic.

[4] FASI – the Future Airspace Strategy Implementation is a long-delayed initiative to redesign the UK's outdated airspace, and in LLA's case as part of the FASI-South project will involve coordinated airspace redesign with the other airports using the London airspace. The project is not expected to deliver before 2030. Some of the technical aspects affecting LLA – such as how to design-in deconfliction where routes intersect – remain to be resolved.

[5] SAF fuel costs are generally expected to be higher than conventional aviation fuel and availability is questionable

35. There is in any case inconsistency in how the Applicant characterises aspects of the JZS, notably those with a nearer-term target date for which LLA could otherwise be held to account. For example, APP-038 para 12.5.12 states:
"..the Jet Zero Strategy includes a number of specific targets, including for domestic flights to be net zero by 2040, and for airport operations in England to be zero emission by the same date. These are target outcomes, rather than mitigation measures that can be incorporated into the GHG assessment. For this reason, neither the London Luton Airport Expansion Development Consent Order nor the Core Planning Case includes these 2040 targets as assumptions."

36. It is unclear why these particular aspects of the strategy but not others should be characterised as "*target outcomes, rather than mitigation measures*" when the majority of the JZS could be described in this way.

3.4 Reliance on carbon pricing to deliver mitigation

37. The Need Case (AS-125) para 6.3.9 item (b) assumes a cost of carbon *"based on the Department for Business, Energy and Industrial Strategy (BEIS) guidance on carbon values 2021, which set out target consistent values of carbon to be used for appraisal purposes"*. We contend this is misleading, as the values adopted in the forecasting model are consistent only with the Jet Zero Strategy which were not (as stated) *"adapted from the BEIS appraisal."*

38. In fact, the DfT's Jet Zero Further Technical Consultation ("JZFTC")[6] states:
"Use of these values would risk overstating the emissions reductions that could be achieved through carbon pricing measures. For this reason, these new carbon values are not suitable for use in forecasting aviation demand."

39. Instead, JZFTC states:
"We have now produced a new set of carbon price assumptions for use in our aviation model which are designed to illustrate the potential range of costs faced by airline operators via the UK ETS, EU ETS and CORSIA in the future."

40. JZFTC goes on to stress:
"Given the market- based nature of these schemes, that future prices will be affected by future policy decisions and the need to make assumptions about carbon prices to 2050, there is considerable uncertainty around these assumptions."

41. The assumptions used in the Jet Zero modelling refer to future policy tools that are not yet in place, and in some cases have yet to be consulted on. Examples include the following:

    1. The modelling assumes that the UK Emissions Trading System will be aligned with the UK's net zero climate obligations. This is a stated Government objective but changes to regulations have not yet been made

    2. It also assumes that ICAO will adopt a new international scheme to replace CORSIA in 2035, with prices that will converge with the UK ETS by 2050. The Aviation Environment Federation (AEF), which participates actively in ICAO's work, confirms there have been no negotiations to date on post-2035 arrangements. The fact that CORSIA credits for a tonne of CO_2 currently cost in the region of $5 when the UK ETS price for an allowance is £53 tonne suggest structural and political differences that will be difficult to harmonise both now and in the future.

[6] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1062042/jet-zero-further-technical-consultation.pdf paragraph 2.10

3. The Jet Zero modelling assumes that the higher UK ETS price applies on routes subject to both CORSIA and the UK ETS, but a decision has yet to be made on how the two schemes should interact. To avoid duplication, the UK is reviewing options for routes where CORSIA and UK ETS provisions apply. It is a possibility that the UK may choose to exempt routes from the UK ETS where CORSIA rules apply, meaning that many LLA flights will no longer be covered by the cap (and its possible future alignment with net zero). CORSIA's requirement is to offset emissions above a level equivalent to 85% of the emissions from international aviation in 2019. This threshold is not compliant with a net zero trajectory. This would affect the Applicant's claim that the majority of LLA's flights are covered by the UK ETS and will, therefore, be subject to an overall cap.

4. A carbon price is assumed to apply to all emissions in the modelling. At present most aviation emissions attract no carbon price at all. For example, a report by Element Energy[7] estimates that only about 17% of total aviation emissions are currently priced within the ETS while CORSIA will not create any offset obligations until global international traffic exceeds 2019 levels. To go from the present situation to one in which high carbon prices generated by the full convergence of global carbon markets are applied to all emissions from all flights may seem far-fetched.

42. We contend that if future carbon pricing does not reach the levels assumed in the forecasting for the reasons stated above, prices are likely to be insufficient to drive the decarbonisation measures relied upon, increasing the emissions associated with the expansion.

43. To put the importance of carbon pricing into context, Jet Zero assumes that pricing is responsible for 14MtCO2 of aviation emissions abatement nationally (27% of the total abatement required to reach net zero) by 2050. These emission reductions are achieved as the costs of decarbonising are passed on to passengers, resulting in reduced demand.

44. The available evidence suggests that even if the mid-range carbon prices assumed in Jet Zero are achieved, they may be insufficient to drive investment in technology and SAF at the pace required. Using the costs identified for removals in EE's report for BEIS, and taking the midpoint of the costs for SAF pathways calculated by McKinsey in its Clean Skies for Tomorrow report, the CORSIA price in most cases exceeds the abatement cost for SAF and removals only from the 2040s onwards.

45. Comparison of CORSIA mid prices and likely abatement costs 2020-2050 (red indicates that carbon prices are unlikely to be sufficient to encourage uptake and investment, green indicates that prices are likely to be higher than abatement costs)

46. The assumed UK ETS mid-price performs better given its more rigorous framework, although prices are again unlikely to exceed SAF abatement costs until the 2040s.

47. Comparison of UK ETS mid prices and likely abatement costs 2020-2050 (red indicates that carbon prices are unlikely to be sufficient to encourage uptake and investment, green indicates that prices are likely to be higher than abatement costs)

3.5 Non-CO_2 impacts

48. APP-038 notes that matters raised during feedback on the consultation report included the comment that *"the impact of non-CO_2 emissions and flight arrivals, not only departures as presented in the 2022 PEIR, should be considered in the assessment of significant effects"*. However, the Applicant has decided to present no modelling of non-CO_2 impacts in this analysis.

49. APP-038 claims that *"non-CO_2 impacts are generally short-lived and reversible"*. The term 'reversible' is not one encountered in the scientific literature in this context and downplays the significance of these

[7] http://aef.org.uk/uploads/2022/05/The-Role-of-Aviation-Demand-in-Decarbonisation-Full-Report.pdf page v

impacts. The latest scientific assessment estimates that to date, the non-CO_2 impacts of flying have caused twice as much warming as from CO_2 alone.

50. The Climate Change Committee (CCC) Sixth Carbon Budget[8] states *"non-CO_2 effects contribute around two-thirds of the total aviation effective radiative forcing – twice as much as historical CO_2 emissions from aviation."* While it is true that impacts such as contrails are more short-lived in the atmosphere than CO_2, whether their impact is reversible depends on whether or not atmospheric warming begins to trigger 'tipping points' - self-perpetuating and irreversible changes to the climate system such as the melting of ice sheets[9].

51. The Applicant further claims that the decision not to attempt to quantify the non-CO_2 impacts of the proposal is consistent with the advice of the CCC. We are not aware of any advice from the Committee that non-CO_2 impacts should not be quantified for planning purposes. In fact, the CCC specifically advises the Government that non-CO_2 impacts should be monitored with a view to developing appropriate policy to mitigate them, and that a demand management framework should be developed in aviation *"to control sector GHG emissions and non-CO_2 effects."*

52. We contend that the non-CO_2 effects of aviation are known to cause significant warming, and increasing them will have a detrimental impact on the UK's contribution to achieving global temperature goals, to which the UK has committed under the Paris Agreement. The Applicant should therefore, in our view have assessed the likely scale of increases in these effects associated with the proposed development.

3.6 Apparent disparity between PEIR and DCO documents

53. Our expectation would be that the Do Minimum "Future Baseline" GHG emissions figures from the totals in Section 8.6.21 Table 8-9 of the PEIR Volume 1 Main Report for statutory consultation which preceded the DCO application, should be comparable with the equivalent line in APP-038 Table 12.22 of the Application.

54. The corresponding values start off fairly similar (1.2Mt in PEIR vs 1.34Mt in APP-038) but by 2050 the PEIR value is 0.8Mt but the APP-038 figure is much reduced, down to 0.297Mt, as shown below:

[8] https://www.theccc.org.uk/wp-content/uploads/2020/12/The-Sixth-Carbon-Budget-The-UKs-path-to-Net-Zero.pdf see Box 8.6, p374

[9] https://www.science.org/doi/10.1126/science.abn7950

Future baseline (DM) Emissions

8.6.21 GHG emissions for the DM scenario have been presented in Table 8-9.

Table 8-9: Operational emissions: DM scenario $MtCO_2e$

Reporting category	2020	2027 (T2 open)	2039 (Maximum capacity)	2050
Airport operations	0.016	0.018	0.014	0.009
Surface access journeys	0.22	0.21	0.20	0.20
Air traffic movements (LTO)	0.12	0.11	0.08	0.06
Air traffic movements (Cruise)	0.9	0.8	0.7	0.5
TOTAL	1.2	1.1	0.9	0.8

Overall emissions for Core Planning Case

12.9.14 The overall GHG emissions, including construction and all operational impacts, for the GHG Core Planning Case (as defined in **Section 12.1.7**) are presented in **Table 12.22** for each of the reference years required by the ANPS. A full breakdown is provided in **Appendix 12.2** of this ES **[TR020001/APP/5.02]**.

Table 12.22: Core Planning Case Emissions: (tonnes CO_2e)

	2019 (Baseline)	2025 (Peak Operation)	2027 (Year of capacity for assessment Phase 1)	2039 (Year of capacity for assessment Phase 2a)	2043	2050
Future Baseline	1,341,235	1,152,552	1,071,661	704,708	521,733	297,708
Core Planning Case	1,341,235	1,278,825	1,262,716	1,137,202	983,890	579,952
Net Impact	0	126,273	191,055	432,494	462,157	282,244

55. Similarly, we would expect the total operational emissions from Table 8-15 of the PEIR to correspond reasonably well with the Core Planning line in Table 12.22 of APP-038. Again they are comparable in 2019 (PEIR 1.3Mt, APP-038 1.34Mt) but by 2039 (1.9Mt vs 1.14Mt) and 2050 (1.5Mt vs 0.58Mt) they differ significantly.

Operational effects: DS DCO-embedded

8.8.15 GHG emissions for the operation of the DS DCO-embedded has been presented in Table 8-15 for each of the reference years required by the ANPS.

Table 8-15: Operational emissions: DS DCO-embedded ($MtCO_2e$)

Reporting Category	2020 (Future baseline)	2027 (T2 open)	2039 (Maximum capacity	2050	Year of peak construction	Year of peak emissions (2039)
Airport operations	0.013	0.01	0.007	0.005	0.01	0.007
Surface access journeys	0.20	0.23	0.30	0.1	0.23	0.30
Air traffic movements (LTO)	0.13	0.13	0.14	0.11	0.13	0.14
Air traffic movements (Cruise)	0.9	1.0	1.5	1.2	1.0	1.5
TOTAL	1.3	1.4	1.9	1.5	1.4	1.9

Note: Emissions from air traffic movements in table 8-14 are reported as CO_2. All other emissions are reported as CO_2e

56. We have not found any explanation for the disparity. However, if it is caused by the Applicant applying the assumptions in JZS, and the modelling associated with it, as if they were policy then we would disagree with this approach for the reasons indicated previously: JZS contains few new policies, but makes assumptions - on so-called Sustainable Aviation Fuels, aircraft efficiency improvements and Zero Emission Aircraft, for example - at the upper end of what could feasibly be possible, as a High Ambition pathway. It is unclear which key actors will be delivering the measures forecast, which policies will be developed to deliver the modelled outcomes, and whether they will succeed.

57. If the Applicant is confident that the High Ambition JZS pathway can be delivered at LLA then we would expect at least a condition be imposed to review annually the airport's performance against the emissions forecasts in Table 12.22 and that any overshoot be corrected for by a reduction in the number of aircraft operating until such time as compliance can be proven.

3.7 Climate resilience

58. The flight forecasts acknowledge likely changes in travel patterns to avoid summer heatwaves meaning more flights outside of the summer peak period. The Application does not however consider how noise assessment would respond to such changes in travel patterns.

59. Noise contour limits are defined for a standard 92-day summer period and depend on parameters which include the numbers of flights during that period, by day and night, and the noisiness of each aircraft type. If changing travel patterns mean flights move from the summer peak to other times of year, then the 92-day summer noise contours would not adequately represent the noise impact – they would under-predict.

60. No provision is made for this in the Application or in the Green Controlled Growth process.

4 Compulsory acquisition and land and rights

61. We opposed at the time, and continue to oppose, the disposal by LBC of Wigmore Valley Park ("WVP") to the Applicant in 2022[10].

62. We regard this disposal as one of a series of actions (including construction of the DART) which in effect are commencement of development of the proposed expansion prior to permission having been granted, since they are not otherwise justified.

63. There is for example no plausible reason for the disposal of public open-space recreational land by LBC to its airport-owning company.

64. The notice of disposal dated December 2021, was preceded in March 2016 by investigations on behalf of LBC to discover the status of the Eaton Green Landfill site which underlies the Park, and which was believed to have been managed by Central Bedfordshire Council.

65. Local residents also testify to a private development proposal for a business park next to WVP, for which LBC stipulated no access from Eaton Green Road and this was written into the Local Plan, and nothing was taken forward. As airport capacity was rapidly increased under Project Curium, LBC announced plans for New Century Park on that site and on WVP.

66. Residents challenged LBC Councillors that this was Airport expansion by stealth, however this was denied. LBC approved a new dual carriageway to serve the proposed New Century Park, and then later the plans for developing Terminal 2 on that site were made public.

67. We respectfully request the ExA to take into account the apparently facilitating works and effective closing of options in what was presented as consultation on this Application.

5 Draft Development Consent Order

5.1 Adequacy of security for project delivery

68. Part 4 paragraphs 29-33 of the Draft DCO (AS-067) refer to key Plans (Offsite highway works, Travel, Operational Air Quality, Greenhouse gas action and Operational waste management) which have yet to be submitted and approved by the relevant planning authority, which we take to be LBC.

69. This raises governance issues since LBC would be a financial beneficiary of the proposed Project, and the ExA may consider it more appropriate for the Joint Hertfordshire Authorities to be involved in the review and approval process.

70. Governance arrangements are a general cause for concern, since Members / Officers of the Applicant's Board sit or have sat on key Executive bodies in LBC including the Oversight and Scrutiny Board, Finance Board and Development Control Committee when LLA-related matters are discussed and voted on; and Applicant-funded charities in the Town may be overseen by LBC Members who also vote on LLA matters.

71. Specific concerns were raised at the 2022 Inquiry about an overall deficiency in governance and unresolved conflicts of interest inherent in the ownership of the Airport.[11] These concerns remain, especially given the key role of LBC in securing project delivery in respect of 'Green Controlled Growth'.

5.2 Funding concerns

72. The Application is unclear how the £2.7 billion development costs would be funded. The Applicant itself has issued qualified accounts for the last two years, and its auditors resigned in 2021. Luton Borough

[10] See "LADACAN objection to Notice to dispose of Wigmore Park.pdf", Jan 2022, provided separately
[11] See Appendix 1 Section 11 paragraphs 102-111 and referenced documents

Council's auditors have not signed off its accounts since 2018, and its Audit Results Report in 2018 is qualified in respect of financial decision-making on airport-related projects. Neither is in a position of financial strength.

73. Were the proposed development of Terminal 2 and the DART extension to commence, but (for example) future demand did not meet the projections of the Applicant for any reason, a situation may arise in which major infrastructure development no longer made financial sense.

74. We ask the ExA to examine the provisions for restoration and making good in such circumstances, since Wigmore Valley Park (a public green space intended to provide a noise buffer between the residents of Wigmore and the Airport site) has already been transferred to the Applicant under a long-term lease.

75. We also ask the ExA to examine the "financial arrangements" referred to by the concessionaire LLAOL in its qualified Letter of Support for the Application. It is unclear whether LLAOL would retain its concession and continue to operate the Airport; or whether the Applicant would both own and operate it (even though not currently qualified to do so under the provisions of Section 17 of the Airports Act 1986); or whether a third party might own or operate the Airport.

76. Key to our concerns regarding certainty over noise, and future control of noise, would be a matter which is not explained in the Application: namely how and in what way would the adoption of the Applicant's demand forecasts, fleet forecasts and noise model be verified and adopted by any future concessionaire?

77. Without such verification and adoption, and future operation of the Applicant's noise model by any future concessionaire's own noise advisers, there would not be continuity or comparability between the forecasts, noise impacts and metrics predicted in the Application and forming the noise envelope expressed in terms of those metrics, and the assessment of the evolving noise impacts over the lifetime of the project.

78. The Applicant has continued to invest heavily in airport-related capital and growth projects (DART and this Application) despite DLUHC instruction in December 2021 to LBC to reduce financial dependency on airport revenue[12].

79. We respectfully submit that although the Applicant has created substantial indebtedness and interest obligations by funding facilitating capital works through loans of public money, ahead of receiving permission for this development, this should not be used to justify the need for additional revenue receipts from an expanded airport in order to be able to expand its charitable donations.

6 Green Controlled Growth

6.1 Noise Envelope Design Group

80. LADACAN was an active participant in the Noise Envelope Design Group (NEDG), and we raise the topic here rather than in section 7 under Noise because the Application has embedded the Noise Envelope into the Green Controlled Growth (GCG) provisions rather than as a discrete noise-related entity as suggested by the Group[13].

81. A key reason for distinguishing the Noise Envelope as a means of noise control, from GCG as a purported means of environmental control, is that the policy concept of delivering certainty by means of noise envelopes is more developed than for other environmental impacts, as indicated below.

[12] See 2022 Inquiry document CD17.17 "KB_To_Luton_Leader" from Minister Kemi Badenoch MP, 8 Dec 2021
[13] NEDG Final Report, paragraph 40, in "Appendix 16.2 Operational Noise Management" APP-111, PDF page 38

82. Early curtailment of the work of the NEDG[14]; lack of effective consultation on the noise envelope itself[15]; and exclusion of measures recommended by the NEDG[16] have in our view weakened both the Application and the certainty which is required from a Noise Envelope.

83. We disagree that the Applicant's interpretation of "sharing the benefits" as set out in Appendix 16.2 Operational Noise Management[17] accords with policy, which places a clear imperative on industry (which would include an airport operator as well as an aircraft manufacturer) to continue both to reduce and to mitigate noise as capacity grows; and that the industry share of benefits is triggered only as noise levels fall:
"We want to strike a fair balance between the negative impacts of noise (on health, amenity (quality of life) and productivity) and the positive economic impacts of flights. As a general principle, the Government therefore expects that future growth in aviation should ensure that benefits are shared between the aviation industry and local communities. This means that the industry must continue to reduce and mitigate noise as airport capacity grows. As noise levels fall with technology improvements the aviation industry should be expected to share the benefits from these improvements." (our underline)

84. The CAA's CAP 1129 document, cited by the Applicant in relation to "sharing the benefits", is clear that it only provides some information to help develop technical guidance on noise envelopes:
"The Government has set out that it 'wishes to pursue the concept of noise envelopes as a means of giving certainty to local communities about the levels of noise which can be expected in the future and to give developers certainty on how they can use their airports'. As such, the Government has invited the CAA to provide information to help develop technical guidance on the concept."[18]

85. The key policy objective of a Noise Envelope is to provide certainty, and we are certain the ExA will wish to examine this issue from a policy perspective.

86. The NEDG's discussion on sharing the benefits is summarised in its Final Report[19] although at the time the Green Controlled Growth document was not available.

6.2 Governance

87. Because of the widespread cross-boundary environmental impacts of LLA, we disagree that in the case of a National Infrastructure Project, Luton Borough Council (as ultimate owner and financial beneficiary of LLA) should be sole ultimate arbiter in regulating future environmental impacts including those on the wider residential amenity – particularly given the history of Project Curium[20].

88. We proposed that the Environmental Scrutiny Group chair and chairs of Technical Panels should be nominated by the Joint Host Authorities.

89. Reporting by Technical Panels to the ESG should be every 6 months ahead of capacity declarations, and remediation of any noise breach should be decoupled from slot issuing and slots rights process.

90. We disagree with the proposition in the 'Green Controlled Growth Framework' (APP-218) section 2.3 that the review of the GCG process should be solely by LLAOL, given the history of Project Curium

[14] NEDG Final Report, paragraph 57, APP-111 PDF page 41; NEDG Interim Report paragraph 4.3, APP-111 PDF page 71
[15] NEDG Final Report, Appendix B, APP-111, PDF page 78 onwards
[16] See for example NEDG Final Report, Appendix B, APP-111, paragraph 11 N60/N65 contours, PDF p33
[17] APP-111 paragraphs 3.3.19 to 3.3.26
[18] CAP 1129, Civil Aviation Authority, Dec 2013, last paragraph on page 8
[19] NEDG Final Report, paragraphs 43-49, APP-111, PDF pages 38-39
[20] Please see "LADACAN written submission of oral evidence at OFH2.pdf", submitted separately, which evidences our oral evidence to OFH2 by cross-reference to Appendix 1 of this Written Representation, "LADACAN_Proof_2022.pdf"

where LLAOL was responsible for the breaches of noise conditions through its inability to manage growth in a controlled and balanced way as indicated in our cross-referenced OFH2 submission.

91. Similarly, we disagree that LLAOL alone should propose a mitigation plan in case of breach. If a breach occurs then LLAOL will again have failed adequately to control its own operation.

92. The 'Green Controlled Growth Framework explanatory note' (APP-217) describes in section 1.7 how when the current concession ends in 2032 the GCG obligations would revert to the Applicant – yet as already indicated the Applicant is not currently qualified to manage an Airport.

93. Paragraph 1.7.7 of the note also states that the Applicant has worked closely with LLAOL to increase the sustainability of operations and ensure GCG is delivered – but if the concessionaire changes in 2032 that understanding would be lost and therefore its outcomes would need to be procured from any new concessionaire by the DCO document.

6.3 Thresholds and Limits

94. Setting Thresholds at 85% of Limits as originally proposed by the NEDG was a value chosen after careful discussion to ensure corrective action was taken in good time to avoid breach, given that noise contours are a retrospective metric, calculated after the event for the preceding year.

95. Table 3.1 on PDF page 63 of the 'Green Controlled Growth explanatory note' (APP-217) modifies this to set Thresholds at 95% of the difference between the Limits and the Do Minimum contour.

96. The effect is that the Level 2 Thresholds are now at 97-98% of the Limit, and the Level 1 Thresholds are at 98-99% of the Limits, rendering them ineffective.

97. Bearing in mind the "inertia" involved either in increasing or decreasing contours, and the risk that too many slots are released to recover from a breach position - as Project Curium demonstrated – we strongly disagree with the proposed approach.

98. We also disagree – particularly in the proposed scenario – that the Airport Operator should (as in paragraph 2.2.13) be permitted to release more slots if a Level 2 threshold is reached, without an expert independent review of whether, in light of circumstances, this would ensure avoidance of breach.

99. If a breach does occur, the mitigation and remediation process could take more than a year as indicated in paragraph 2.2.27 – again this is unacceptable, and demonstrates that Green Controlled Growth is designed to be able to fail, mired in committees, therefore no better than the process under Project Curium.

7 Noise

7.1 Policy

7.1.1 Overarching Noise Policy (March 2023)

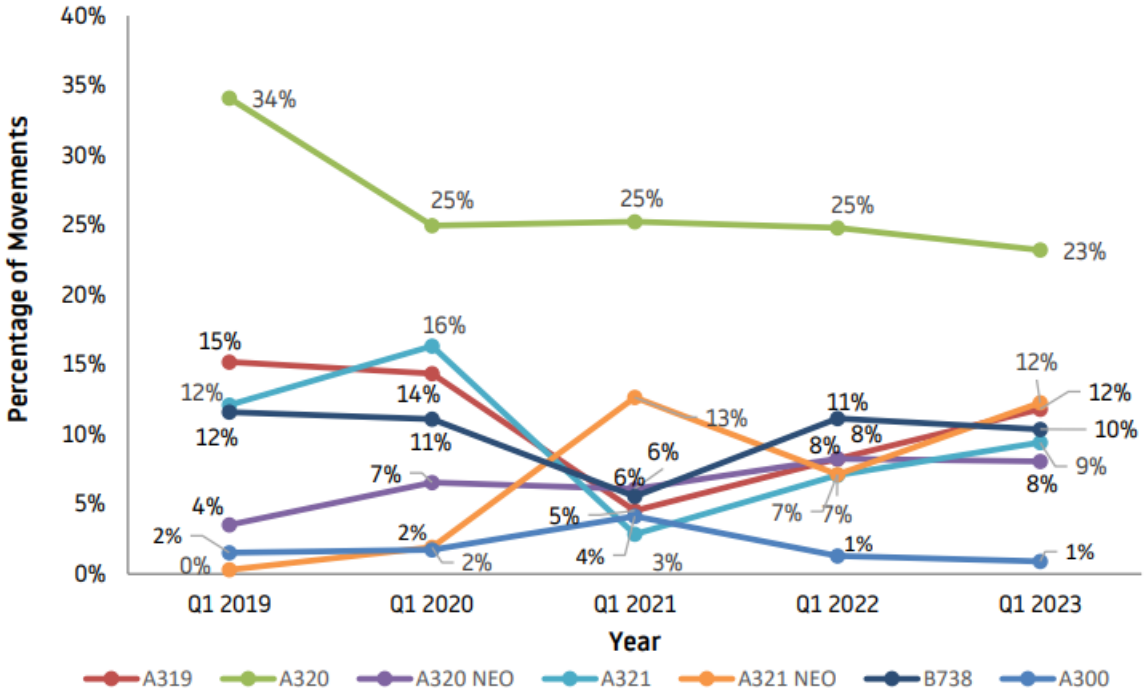
100. We have provided separately as requested our comments on the Overarching Noise Policy, summarising the policy requirements into five tests which we reiterate here in italics, with our comments in respect of this Application beneath:

1) *Is the benefits/harms balance being applied in the context of sustainable growth?*
No. The Application would increase noise, air pollution, carbon emissions and non-CO_2 impacts overall, and make it harder for the UK to achieve Net Zero by 2050, and is not sustainable by the Brundtland definition which forms part of the policy definition of sustainability.

2) *Has the specific airport noise problem and been identified and all measures available to mitigate and reduce noise been analysed, explored and put in place?*

No. The Applicant has not analysed, explored and put in place all available measures for noise mitigation and reduction. One such measure is Noise Abatement Departure Procedures but no analysis has been provided even though LLAOL has conducted a trial. Another is to follow the ICAO balanced approach and restrict operations at night, yet 70% more night flights are proposed. An available quasi-mitigation, noise insulation, has not been fully installed even to the lower standards of Project Curium, and would be fully rolled out (and with inferior installations upgraded) ahead of increased noise impact.

3) *Have the noise-related measures that achieve maximum environmental benefit most cost-effectively by objective measurable criteria been identified and put in place?*
No. Fleet modernisation is still at the point where according to the most recently published Quarterly Monitoring Report from LLAOL the type percentage of aircraft movements is:



4) *Has the analysis taken into account the local and national context of both passenger and freight operations, and recognises the additional health impacts of night flights?*
No. The Application does not take account the local context of largely unmitigated increase in noise caused by the accelerated growth in Project Curium. The Application proposes to increase night noise and bring more people into SOAEL rather than recognising and responding to the additional health impacts of night flights. The Need Case does not justify why Project Curium is insufficient in the local and national context, bearing in mind it still has until 2028 to run, and the current concession extends until 2031. That timeframe would permit (according to current projections) delivery of airspace redesign which is now an important part of the national context of both passenger and freight operations in order to reduce carbon emissions, delays and noise impacts.

5) *Has the impact of aviation noise been mitigated as much as realistic and practical, to limit and where possible reduce total adverse impacts on health and quality of life?*
No, for the reasons summarised above, and because it would be realistic and practical to limit and reduce adverse impacts on health and quality of life by limiting and reducing night flights given the location of LLA.

7.1.2 Flightpath to the Future (May 2022)

101. On page 6 under '*Embracing Innovation for a sustainable future'*, Flightpath to the Future's Executive Summary describes the importance of the Jet Zero Strategy as requiring *"an extensive transformation of the sector over the coming decade"*. It also sets the expectation that [government] *"will also continue to work with the sector to reduce the localised impacts of aviation from noise and air pollution"* echoing item 4 of the ten-point plan, page 10.

102. The localised aspect is tied to sustainability under '*Tackling the localised impacts of aviation*' on pp35 where it says *"Air quality emissions and noise from aviation can have detrimental impacts on local communities, and addressing these impacts is an important aspect of a sustainable future for the sector."*

103. That section goes on to explain that the CAA has assumed responsibility for most of the functions of ICCAN and that government support for those functions remains. It stresses *"This will include collaboration on the CAA's plans to create a new Sustainability Panel, designed to provide independent expert advice on a range of environmental issues including carbon, noise and air quality."* Again, sustainability of the sector is linked not just to carbon but to noise and air quality as well.

104. 'Tackling localised impacts' concludes by saying *"These included a clearer noise policy framework alongside measures to incentivise best operational practice to reduce noise **and** measures to improve airport noise insulation schemes."* (our emphasis). Latest policy requirements treat reducing noise and improving noise insulation schemes as essential and distinct aspects: noise insulation alone is inadequate; noise reduction is required also.

7.1.3 Night Flight Restrictions and consultation background (2021)

105. The DfT's 2021 Decision Document "Night Flight Restrictions at Heathrow, Gatwick and Stansted" confirms its intention to roll over the existing night flight restrictions at the designated airports until October 2024, and states on p5:
"By rolling over for three years, the extra year will allow the government to develop a more meaningful evaluation of the costs and benefits of night flights … This will enable decisions to be taken against a background of a wider evidence base, including on the negative impacts on sleep and health, against which the economic benefits of night flights have to be balanced."

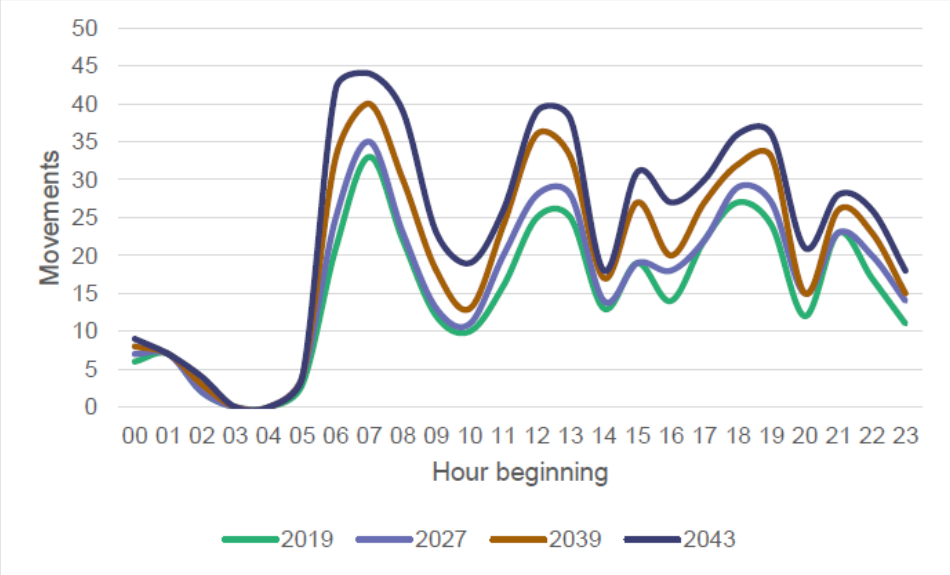
106. The DfT website page providing background to the consultation states:
"The government recognises that noise from aircraft taking-off and landing at night is often regarded by communities as the most disturbing form of airport operations. We also recognise that there is evidence, including in the World Health Organisation's (WHO) revised 'Environmental Noise Guidelines for the European Region', that sleep disturbance caused by aircraft night operations can have adverse health impacts on overflown communities."

107. The background also makes clear that the Government recognises the harms associated with night flights, and the changing context in which people live and work post-COVID, as well as the benefits to business of good being transported at night.

108. This Application however is not predicated on the economic benefits of increasing the transport of essential goods by night, Instead, it is predicated on enabling budget airlines to maximise return on asset investments by increasing the distance travelled and/or the number of rotations flown per day as aircraft are cycled from LLA to other destinations and back.

109. We disagree with the proposals to add many more scheduled aircraft to the early morning and late evening, with departures starting at or before 5am (currently 6am) and air noise filling the available hours between, and aircraft arriving and departing in the small hours, resulting in at worst barely two out of 24 hours being almost free of air noise as indicated in the Need Case (AS-125 printed page 139):

Figure 6.22: Profile of two-way scheduled aircraft movements on a busy day



Source: York Aviation

7.1.4 Airports National Policy Statement (Jun 2018)

110. The ANPS provides general guidance on decision-making regarding airport expansion, including:
"5.68 Development consent should not be granted unless the Secretary of State is satisfied that the proposals will meet the following aims for the effective management and control of noise, within the context of Government policy on sustainable development:
• Avoid significant adverse impacts on health and quality of life from noise;
• Mitigate and minimise adverse impacts on health and quality of life from noise; and
• Where possible, contribute to improvements to health and quality of life."

111. This Application fails the first test because it would cause additional significant adverse impacts on health and quality of life from increased noise by exposing more people to noise levels above SOAEL.

7.1.5 Beyond the Horizon: Making best use of existing runways (Jun 2018)

112. DfT's 2018 'Making Best Use' (MBU) policy document states in 1.5 that government "was minded to be supportive of all airports who wish to make best use of their existing runways, including those in the South East, subject to environmental issues being addressed." The key criterion is environmental issues being addressed – MBU does not give carte blanche for significant development to make maximum possible use of every airport runway.

113. Paragraph 1.29 says *"any proposals should be judged by the relevant planning authority, taking careful account of all relevant considerations, particularly economic and environmental impacts and proposed mitigations."*

114. Paragraph 1.22 states *"it is important that communities surrounding those airports share in the economic benefits of this, and that adverse impacts such as noise are mitigated where possible"* which clearly requires what is possible to be done.

115. MBU requires adverse impacts such as noise to be mitigated where possible, including via airspace change.

7.1.6 Beyond the Horizon: Next steps towards an aviation strategy (Apr 2018)

116. The Foreword (printed page 5) states *"As demand for aviation services continues to increase, we must ensure that the sector is able to grow in the most sustainable way. This means addressing the noise and air quality issues experienced by communities, as well as the global effects of carbon emissions."*

117. Paragraphs 6.32-6.39 highlight the importance of airspace modernisation in resolving the following issues:
- inefficient flight paths not optimised to reduce noise
- planes queueing in holding stacks, increasing noise and emissions
- holding at lower altitudes increasing noise
- ICCAN to advise on noise impacts of airspace changes

118. Paragraph 6.42 - as airports grow, surface access options need to be developed.

119. Paragraph 6.44 - government expects transport service organisations like Network Rail and Highways England to work with industry to provide surface access provisions to airports across the UK.

7.1.7 Aviation Policy Framework (2013)

120. The APF 2013 sets out underpinning policy principles in respect of aircraft noise, and DfT officials confirmed on 11 July 2023 at its multi-stakeholder Airspace and Noise Engagement Group meeting that those policy principles remain in effect.

121. The APF is clear in its policy requirements when airport expansion is being considered, as summarised here with reference to relevant paragraph numbers. Beneath each summary are our comments in italics on the application of the policy to this Application.

122. *Paragraph 3.1 recognises the economic benefits of aviation, and the costs associated with its environmental impacts borne by those living around an airport who may not directly benefit from its operations.*
There is a case to be made, particularly since public money has been used to fund the preparation of this Application and its facilitating works, and that the Secretary of State will determine it, that a monetised WebTAG analysis of the effects of its increased noise on health and residential amenity should be provided.

123. *Paragraph 3.2 recognises noise as the primary concern, and the extent of tension over noise depends on an airport's location relative to population centres and the quality of its relations with local communities.*
LLA is sufficiently proximate to communities in South Luton, Breachwood Green, Stevenage that many people have no respite at all from its arrivals or departures; other communities are affected by significant levels of noise depending on wind direction and to further increase that noise when it was already higher than consented for three years 2017-2019 is a matter of significant concern, and detracts substantially from the quality of relations between LLA and local communities as the RRs show: more than 90% are opposed to further expansion. Trust has been lost due to the long-running and unresolved conflict of interest at LBC and the incentivisation of accelerated growth which undermined planning controls intended to give certainty.

124. Paragraph 3.3 emphasises the need for a fair balance between the negative impacts of noise and the positive economic benefits of flights; and that future growth should ensure benefits are shared, by industry continuing to reduce and mitigate noise as capacity grows, and as noise levels fall with technology improvements the industry should be expected to share the benefits of those improvements.
As indicated in our cross-referenced written note of oral submission to OFH2, in the 'future growth' period post-2013, the accelerated growth ahead of mitigation led to windfall financial returns for

industry and LBC/Luton Rising, but at the cost of a rapid rate of increase of noise particularly at night between 2014 and 2019 (and now climbing again post-COVID), and was not in accordance with policy. This Application proposes further benefits to industry through additional passenger traffic and aviation activity while noise levels would further increase, which is also contra to policy. Industry must continue to reduce and mitigate noise as capacity grows, and only share the benefits as noise levels fall.

125. *Paragraph 3.4 emphasises that the UK has a particular aircraft noise issue and government expects aviation industry at all levels to lead the way in best practice.*
The approach to this Application has not led the way in best practice. The initial consultation involved a tick-box questionnaire in which people had no option to disagree with the proposition. External auditors have called into question financial decision-making in respect of airport decisions in a Council which ought to have resolved its obvious conflicts of interest. The windfall revenues from incentivised condition-breaking growth were used to facilitate further works to pave the way for this Application while noise insulation to protect residents was (and still is) only partially installed. The Applicant's auditors resigned over valuation of the airport and questionable accounting, and LBC's accounts for 2018/19 have not been signed off for similar reasons.

126. Paragraph 3.7 confirms government recognition that all four components of the ICAO 'balanced approach' apply.
Our comments in section 7.1.1 above highlight the need for operational restrictions should other mitigations fail to reduce noise, yet the Application assesses impact scenarios based on its forecast rates of growth, not on environmental limits. Green Controlled Growth is simply a misleading misnomer.

7.1.8 Noise Policy Statement for England 2010

127. The NPSE sets out its Noise Policy Vision in 1.6 as being: *"Promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development."* and its aims in 1.7 are *"Through the effective management and control of environmental... noise within the context of Government policy on sustainable development: avoid significant adverse impacts on health and quality of life; mitigate and minimise adverse impacts on health and quality of life; and where possible, contribute to the improvement of health and quality of life."*

128. The government's overarching principle on Sustainable Development is reiterated in NPSE 1.8 as:

129. *"**Living Within Environmental Limits** – Respecting the limits of the planet's environment, resources and biodiversity – to improve our environment and ensure that the natural resources needed for life are unimpaired and remain so for future generations."*

130. This Application would increase carbon emissions, reduce air quality as well as increase the adverse impacts on people and the environment of noise, especially at night.

131. The Guiding Principles continue:

132. *"**Achieving a Sustainable Economy** – Building a strong, stable and sustainable economy which provides prosperity and opportunities for all, and in which environmental and social costs fall on those who impose them (polluter pays), and efficient resource use is incentivised."*

133. This provides a yardstick for assessment of whether the Application delivers economic diversity and resilience; as well as ensuring that the environmental and social costs are assessed and laid at the door of the polluter; and that efficient resource use is incentivised by the Application (for example by ensuring airspace and the fleet are both first modernised to minimise needless noise and carbon impacts, before increasing flights).

7.1.9 Application of policy in this case

134. Each application must be considered on its own merits – in other words one planning consent ought not to be used to try to create precedent for another.

135. Policy also requires balance, and it is our contention that to redress the recent unbalanced uncontrolled growth in its environmental harms, Luton Airport's owner - the Applicant – should now focus on delivering long-outstanding promises of mitigations and reductions to those harms before further capacity growth.

136. Such mitigations and reductions would include: airspace change (to reduce noise and needless emissions), reduced night flights (to minimise health harms); noise abatement departure procedures (to reduce noise), further fleet modernisation (to reduce noise and emissions) and a more significant modal shift of passengers away from cars (to reduce surface transport loading and emissions, and improve air quality).

137. The economic benefits of an 18mppa Luton Airport are already significant and beneficial: this was made clear as recently as 2012 in the application for 18mppa.

138. The Need Case for this Application does not justify why further development would be required to create economic benefit above that already delivered by Project Curium, and how such further development is (in all required senses) sustainable.

7.2 Noise levels resulting from the Application

139. The 'Comparison of consented and operational noise controls' (AS-121) clearly shows in Insets 1 and 2 that noise is increased by the Application compared to the currently consented Do Nothing noise contour limits.

140. We respectfully invite the ExA to agree that this Application therefore fails to achieve a key objective which is expressed across UK aviation noise policy (see section 7.1 above), namely that noise levels should fall over time, particularly as capacity is increased; and fails a further key objective to address levels of noise at night.

141. Any mitigation by reduction of noise at source through fleet modernisation or other operational measures over time is already factored into the noise contours shown in Insets 1 and 2, since the noise model uses the fleet forecast data. Noise insulation is partial compensation and not fully effective noise mitigation, as indicated in section 7.6.1.

7.3 Baseline

7.3.1 Disagreement in principle regarding baselines

142. The Applicant's Scoping Response quoted below seeks to use the Scoping Opinion to justify a 2019 baseline:
"Although it is acknowledged that, in 2019, existing noise contour limits were exceeded for both day and night periods, the use of 2019 as a baseline is to identify if there will be any changes to health and quality of life from the last year of typical operating conditions. The use of the 2019 Actuals baseline is also in line with the Scoping Opinion that notes at 4.5.4 that "The baseline year and the baseline noise monitoring year should be consistent"." (APP-47, top right box on printed page 93, Applicant Response column).

143. We fundamentally disagree with this approach to any of the assessment baselines: 2019 was by no means a year of "typical operating conditions" for several reasons:
a) The foreword to LLAOL's 2019 Annual Monitoring Report (AMR)[21] describes 2019 as *"another record-*

[21] See 2022 Inquiry document CD8.26 "LLA AMR 2019" published in 2020

breaking year for London Luton Airport, as we approached 18 million passengers passing through the airport."

b) The Key Monitoring Indicators on printed page 4 of the AMR confirm a passenger total of 17,999,969 (2018: 16,581,850) so the Project Curium passenger cap was reached; a noise complaints total of 12,735 (2018: 8,275); and all the noise metrics increased versus 2018

c) Noise contour planning conditions breached for the third year running.

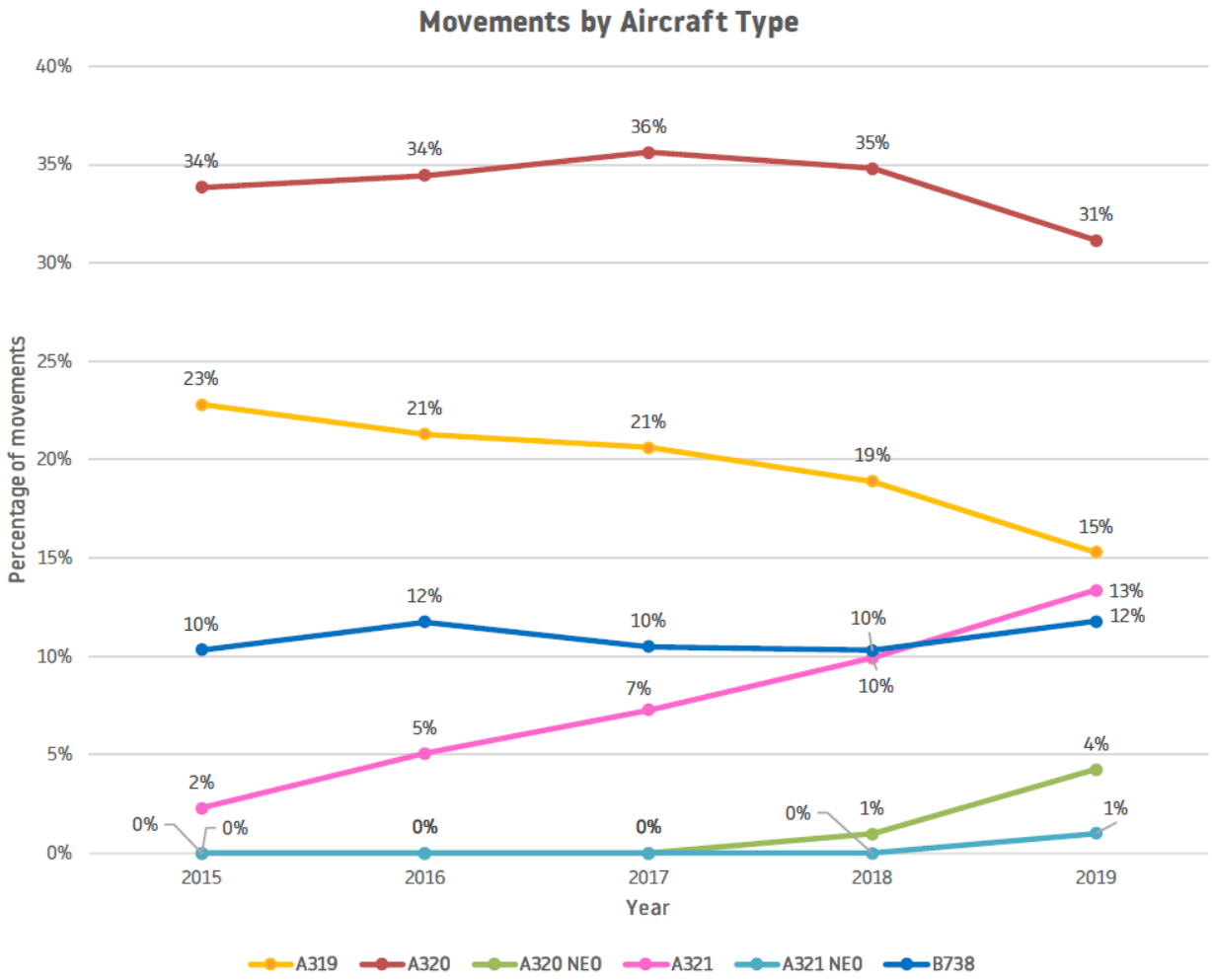
d) Restrictions on night movements and ad hoc movements which purported but failed to contain the contours within limits.

e) A fleet which contained just 5% modernised slightly less noisy "neo" types (2018: 1%) but with this potential benefit erased by an upsurge in noisier unmodernised A321 and B737-800 types to 25% (2018: 20%) as shown in the diagram on AMR page 11 reproduced below.

f) The rise in numbers of unmodernised types compared to modernised more fuel-efficient types, coupled with the accelerated growth in passengers ahead of significant modal switch to public transport and electric vehicles, making 2019 a year of needlessly high greenhouse gas emissions.

g) A fleet trajectory towards larger types (A321, A321neo) with more seats yet without permission to exceed the passenger cap, risking enforcement against breach of an additional planning limit.

The graph below shows the percentage of the most popular type of movements by aircraft type at LLA. The data goes back five years for data comparsion purposes.



7.3.2 Disagreement with calculation of a 'consented noise baseline'

144. We fundamentally disagree with the method used by the Applicant to calculating a 2019 consented noise baseline as described in AS-096 6.17.2:
"A fleet that is compliant with the Condition 10 noise contour limits was developed by increasing the number of new generation aircraft and reducing current generation aircraft by an equivalent amount."

145. LLAOL's statement to the 2022 Inquiry quantified the extent of breach in terms of non-consented ATMs[22]:
"...the Airport would have to remove 30 daytime movements from the daily summer schedule (9%) and 13 night-time movements from the daily summer schedule (22%) compared with 2019 in order to comply with Condition 10."

146. The method adopted to model the consented fleet overlooks that too many aircraft flew too soon to carry too many passengers before the fleet had been modernised. The method would have the effect of creating a 'consented fleet' with increased numbers of seats and therefore not in accordance with 18mppa; an increased number of flights of on-average less noisy aircraft therefore not giving correct N-above contours or LAeq contours; and a distorted impression of the carbon emissions due to creating a higher percentage of modernised aircraft than were in the fleet at the time.

7.4 Noise modelling

7.4.1 Ambient noise survey

147. We note the ExA's Rule 9 request for information about the attended noise surveys and the responses provided in 'Ambient noise monitoring data and survey sheets' (AS-120). It is not entirely clear to us the purpose to which this noise survey has been put, and whether the data gathered is fit for that purpose.

148. Taking one example location, ML37 (Breachwood Green JMI School), the sound survey was conducted over two periods 26/02/20-10/03/20 and 13/03/20-23/03/20. The survey sheets (AS-120 printed pages 74,75) note the dominant noise source as school children in school hours, followed by road noise and then aircraft.

149. On page 7 of AS-120 the entry is written up differently, with the Primary Sound Source being Aircraft, and school activities relegated to Secondary, and this is as also reported in Appendix 16.1 AS-096 Table 4.1 page 11.

150. The noise monitor data plot (survey sheets AS-120 page 116, repeated also in Noise Appendix 16.1 AS-096 page 49) shows the two time periods, but most of the data is grey-shaded as (according to the key) Omitted Weather. The same applies to many of the other sheets. Sampling appears to be set at 15 minute intervals.

151. Table 4.5 "Unattended baseline monitoring results" in Appendix 16.1 AS-096 shows the results for ML37 on page 16 as 83dB LASMax (day) and 81dB LASMax (night), and the preamble in 4.3.3 confirms that periods of adverse weather were excluded – in this case, most of the collected data.

152. No confidence intervals are provided for the numbers in Table 4.5, and in fact it is unclear where they are otherwise used. Table 2.1 on page 3 of the survey sheets AS-120 describes the Ambient noise monitoring as being *"Used to spot-check and verify the baseline road traffic noise at key road links in the surface access study"*, and *"Used to provide qualitative information about the character of the existing noise environment at an assessment location and hence provide context for the noise assessment"*.

[22] See 2022 Inquiry document APP-W2.1 "Proof of Evidence of Andy Hunt", Appendix 1 "London Luton Airport Operations Ltd - Statement Relating to Operations at the Airport and Forecasting", paragraph 72

153. We are not surface transport noise experts, but we flag for the attention of the ExA that if the data from this series of surveys is being used quantitatively to spot-check and verify road noise modelling (with a footnote indicating no changes needed) then some indication of confidence level and usable sample size over the period of monitoring would normally be expected.

154. In terms of the air noise model, it appears these ambient survey values were not used, since Appendix 16.1 AS-096 goes on to describe in section 6.7 on page 73 and onwards the noise data being provided by LLAOL instead to validate the noise model.

155. This is as we would expect, since to be of any value the noise data for air noise modelling would have to be correlated with specific aircraft movements and the distance to the monitor and the aircraft altitude known in order to assess validity. Therefore it is unclear why ML locations were used at all if they were not (for example ML-1, ML-4, ML-9, ML-19, ML-22, ML41, ML42, ML43) located near key road links.

156. Since the ML locations were selected by the Noise Working Group, we respectfully request the ExA to seek clarification on the original objective of surveying noise at the ML locations. If it included surveying air noise (since many ML locations are not on key road links), and if LLAOL monitoring data was not made available for those locations (which can be determined from Chapter 16 Noise and Vibration Figures 16.3 in AS-103) then the survey may have failed to achieve its intended purpose.

157. We also ask the Exa to consider why, if the ambient survey data was sufficiently reliable to be used for the validation of the traffic noise calculations, it was not used for the calibration of the air noise model; or conversely if it was not sufficiently reliable to be used to validate the air noise model, was it sufficiently reliable to validate the traffic noise calculations.

7.4.2 Air noise model validation

158. Insets 6.36 – 6.41 of Noise Appendix 16.1 (AS-096 PDF page 142 and following) do not correlate well across the various monitoring locations for all aircraft types despite adjustment, and there is not consistent offset.

159. Pepperstock (LTN_PPR) is sufficiently close to the runway for the swathe to be fairly tight, but the variability of error between the different aircraft types is concerning.

160. Flamstead (LTN_FLM) is also not showing consistent offsets: a correctly calibrated model should not, we contend, be predicting the A321neo almost 3dB higher than measured, yet the B737-800 almost 2dB lower.

161. The Applicant may argue that these locations are not in the assessment zone, but Breachwood Green (LTN_BG) is, and its adjusted values show almost a 2dB error in either direction for A319 and A321.

162. If the NEDG had continued its work, LADACAN would have proposed investigating this issue at the time.

163. Of significant concern are the unresolved disparities in the South Luton (LTN_SLTN) predictions, since that is not only a key location for assessing departure profiles, it is also a key residential location for noise impact assessment. The issue is discussed but not resolved in Noise Appendix 16.1 paragraphs 6.10.2 to 6.10.6.

164. The statement in paragraph 6.10.3 *"As such, LTN_SLTN has been omitted from the validation exercise. This is considered justifiable as it would result in a smaller correction applied to approaches, which would result in smaller noise contours (i.e. lower noise levels)."* is unclear.

165. Departure noise monitoring conducted in South Luton by LLAOL has also delivered widely varying results (typically 4dB(A) difference in average results between the locations) per aircraft type at different locations (Tennyson Road and Cutenhoe Road) and at different times of year.[23]

166. One of the key factors in assessing measured peak noise of an aircraft transit is the altitude of the aircraft relative to the monitor; another is the distance from the monitor, and it is observed that aircraft operated by different airlines may fly on average further north or further south in the swathe passing South Luton: it would appear to us that the calibration of the model needs further assessment.

167. It is noteworthy that LLAOL did not until earlier this year have a routine in place for regularly checking the calibration of its noise monitors, and any LLAOL data used in the validation of the noise model should only be relied on if correct calibration has been assured from the calibration records in its Tanos system.

7.4.3 Airbus A321neo issue

168. An issue regularly discussed in LLA's Noise and Track Sub-Committee, and agreed by LLAOL, is that the Airbus A321neo is not delivering the noise benefits expected from its certification values. This issue is seen elsewhere also – for example at Gatwick Airport.

169. In investigating the issue, LADACAN has identified a possible link to the types of engines on the A321neo aircraft used by a particular airline: Pratt & Whitney engines appear to create more air noise than CFM-LEAP engines on the A3212neo type. Wizz, the dominant operator or A321neo aircraft at LLA, uses Pratt & Whitney engines.

170. Paragraph 6.6.3 of Noise Appendix 16.1 (AS-096 PDF page 85) reaches the same conclusion but assumes that this issue will be resolved over time: we disagree with that assumption since it is most unlikely indeed that Wizz would re-engine its fleet in response to a noise issue.

171. We strongly disagree with the departure correction of -2dB adopted for the A321neo in Table 6.2 paragraph 6.6.5 of Appendix 16.1 during assessment phase 1, since this is not borne out by the data in LLAOL's Quarterly Monitoring Reports over the period Q1 2022 to Q1 2023 inclusive. They show the noise benefit of the neo type compared to the A321ceo can be as low as 1dB or less, and appears never to reach 2dB.[24]

172. Similarly, and because of the engine noise issue mentioned above, we also contend that the A321neo noise modelling departure correction of -3.7dB applied for assessment phases 2a and 2b is overstated.

173. The net result of these two overstatements of benefit would be that the noise model under-predicts, and this would create an increasing error as the forecast future fleet shows increasing numbers of A321neos.

7.4.4 Next generation aircraft

174. We disagree with the statements made in section 12.6 of Appendix 16.1 (AS-096 PDF page 265 and on) concerning likely noise benefits from 'next generation' aircraft, likely future reductions in noise, and the sensitivity tests which result from what appear to be incorrect assumptions.

[23] LLAOL Community Noise Reports can be accessed at this link:
https://www.london-luton.co.uk/corporate/community/noise/community-noise-reports
The reports we reviewed are: South Luton Oct-Dec 2019; South Luton Jan-May 2022; South Luton Jun-Oct 2022
[24] LLAOL Quarterly Monitoring Reports can be accessed from this link (the singular form of 'report' is correct):
https://www.london-luton.co.uk/corporate/community/noise/quarterly-monitoring-report

175. Paragraph 12.6.1: even if aircraft using so-called Sustainable Aviation Fuel are classed as 'next generation', no evidence is provided or as far as we can see available, to support the proposition tat they may be less noisy.

176. Paragraph 12.6.2: having reviewed the ICAO report on Environmental Trends in Aviation we disagree that it predicts a decrease in noisiness ranging from 0.1 to 0.3 EPNdB per year.

177. What the report actually does, on page 7 of 8 under the heading 'Trends in aircraft noise', is to develop four scenarios based on different assumptions as to what may happen in future, and then apply those scenarios to the amalgamated contours from 319 global airports to gauge the effect of the assumptions.

178. This is quite different from evidencing a future reduction in noise based on technological development and as such we regard the modelling adjustment in the Application as entirely spurious. Removing this adjustment would increase the long-term contours by 2.4dB to negate the contrived benefit.

179. Paragraph 12.6.3: we regard it as utterly spurious to assume that the step change to geared-turbofan engines which delivered a just-perceptible 3-4dB departure noise reduction at the statutory monitors for the A320neo (but not for the A321neo) would somehow be replicated in the step-change to 'next generation'.

180. The focus of next generation is to switch to electric power (in which there is no weight-reduction in flight and hence arrivals noise would be expected to increase due to increased thrust to support the weight) or to hydrogen power (in which case overall airframe size would increase for the same number of seats due to the large hydrogen tanks, increasing both arrivals noise and departure noise).

181. The applied 2.5dB benefit should therefore be reversed in the modelling, further increasing the contours.

182. We are confident the ExA will disregard any contours and impact assessments based on assumptions which are unevidenced and appear to be misleading.

7.5 Night flights

183. As indicated in section 7.1 on Noise Policy, we strongly disagree with the proposed significant increase in night flights, regarding it as against policy, unjustified, and likely to cause significant harms to health and quality of life not just in Luton but across the wider area.

184. An aggravating factor is the need, until the FASI-South redesign of airspace in the South-East has been completed, for flights to and from LLA often to be held low at 4,000 or 5,000ft to avoid conflict with other flights either from LLA or from other airports using the local airspace.

7.6 Mitigation

7.6.1 Noise insulation

7.6.1.1 Limitations

185. Noise insulation is essentially compensation rather than effective mitigation, and may not be available to all properties which need it.

186. The noise impacts on two neighbouring houses on the same road will be indistinguishable to a resident, yet one may be eligible the other not depending on where an LAeq contour line happens to fall.

187. Humans do not hear in averages, they respond to individual noise events and can be awoken by a single noise event exceeding a particular loudness. Therefore a compensation scheme based on N-above contours would be more appropriate particularly for night noise.

188. Listed properties may not be able to install noise insulation; nor is it clear whether insulation under the Application would be offered as an upgrade to homes already fitted with inferior insulation under Project Curium; nor would it be installed in an eligible rented property unless the landlord accepts the offer.

189. Noise insulation is ineffective if people open their windows at night in summer; or are on a balcony; or wish peaceably to enjoy their garden; or visit a park or other outdoor space affected by overflights.

190. The ExA will wish to assess whether it is feasible to make a sensible judgement on eligibility for Scheme 3 (for example) in Table 1.1 of AS-128 when the criteria ("*Residential property inside the night-time 55dBLAeq,8h contours and outside the daytime 60dBLAeq,16h contour*") indicate for the most part a very small area between the blue and orange/blue outlines on the contour maps in AS-126, thinner than the lines themselves.

7.6.1.2 Best practice

191. ICCAN Guidance on noise insulation includes internal noise levels being checked. This has not been done to date on all installations as far as we are aware.

7.6.1.3 Parked mobile homes

192. Parked mobile homes in Pepperstock are directly overflown by westerly departures at low altitude, but the Application does not propose to treat this kind of property as a special needs case for compensation by noise insulation on the basis of internal noise levels.

7.6.1.4 Caddington

193. Caddington is also a special case: peak noise levels from flight arrivals directly over residential areas at low altitude are broadly equivalent to those in Breachwood Green, yet based on noise contours alone, much of Caddington is outside the noise insulation eligibility zone.

194. Any eligible homes inside the turquoise lines but outside the mauve lines on the maps in AS-126 can only claim under Scheme 5 (the least effective insulation option).

7.6.1.5 Existing deficit

195. Records from the current scheme indicate that noise insulation was not installed at an accelerated rate matching the accelerated growth trajectory in flights and noise impacts up to 2019.

7.6.2 ICAO balanced approach

196. In the absence of any other effective mitigation for the health harms of night noise in particular, the ICAO Balanced Approach would require operational restrictions – in this case a reduction in night flights from current levels, rather than any increase.

8 Physical effects

197. We note that the topology of the site would necessitate major earthworks, reducing cost-effectiveness and increasing noise and vibration, odours, emissions and disturbance as well as contractor traffic.

198. There would be unknown risks and hazards associated with the excavation of or piling into the toxic landfill site which underlies Wigmore Valley Park, particularly due to the lack of continuity in past records as indicated by this email:

From: [redacted]
Sent: 08 March 2016 10:54
To: Pollution
Cc: [redacted]
Subject: Enquiry regarding Eaton Green Road Landfill

Dear Sir/Madam,

We are assisting Luton Borough Council with possible options for the expansion of Luton Airport. We are trying to obtain information on an historical landfill called Eaton Green Road Landfill which we understand from Luton Council was managed by Central Bedfordshire Council at one point in time? Attached is a map of the location of Eaton Green Road Landfill.

We are looking to obtain copies of any records of site investigation reports, gas and groundwater monitoring for the landfill which you may have. In addition any closure reports or other information relating to the condition of the landfill.

Many thanks,

9 Social economic and land-use

9.1 Socio-economic benefits

199. LADACAN endorses the Written Representation of the New Economics Foundation in respect of the overstatement of socio-economic benefits associated with the Application.

9.2 Wigmore Valley Park

200. Wigmore Valley Park sits on a toxic landfill site, but has matured into a County Wildlife Site and is an important green space buffer between housing in Wigmore and the airport.

201. The removal of agricultural land to create a substitute Park some distance away reduces residential amenity, and reduces the UK's available agricultural land at a time when food costs are rising.

202. We fundamentally disagree with the proposal to destroy Wigmore Valley Park to build car-parks, aircraft stands and a second Terminal.

10 Traffic and transportation

203. Frequent M1 delays in the regions of J9-J11 quickly spill over to clog local rural roads even at current traffic levels.

204. The Airport has poor east/west road links, with access via rural roads and rat-runs, and fly-parking is a significant problem in the surrounding area.

205. The north/south rail link is already crowded, and unlikely to deliver a modal shift from private cars.

11 Recent planning history

206. The Planning Statement (AS-122) provides a summary of recent planning history but omits key information which evidences the unbalanced growth without mitigation which has occurred since 2014, involving:

- Removal of Condition 11i which set type-specific noise violation limits
- Targeting by LBC and Luton Rising of accelerated growth without regard for planning limits
- The 2014 Growth Incentive Scheme put in place immediately after 12/01400/FUL was agreed

- Lack of delivery and signoff of a Long Term Noise Contour Reduction Strategy
- Release of too many slots leading to the 19mppa application

207. In each of the above cases, the benefits accrued to industry rather than to local communities impacted by noise, and we respectfully request the ExA to take the view that the current application is being made at a time when the balance has over recent years been tilted heavily in favour of delivering revenue for the industry, the Applicant and LBC, rather than (as policy requires) being matched by equivalent mitigation.

208. Our written submission of oral case presented at OFH2 contains detailed cross-referencing to Appendix 1 of this document, and via that to other documents, evidencing the points made.

209. Therefore, when weighing this Application, we represent strongly that it is essential to factor the current deficit in residential amenity into the equation.

Appendix 1 – LADACAN Proof of Evidence to the 2022 Inquiry (“LPoE”)

LADACAN

Proof of Evidence to Planning Inquiry

concerning the effect of other considerations on the overall planning balance and the effect of noise associated with the proposal on health, quality of life, and the character of the area.

Submitted by Andrew Lambourne

Chair of the Luton and District Association for the Control of Aircraft Noise (LADACAN)

APPLICATION BY LONDON LUTON AIRPORT OPERATIONS LTD
(REF APP/B0230/V/22/3296455)

VARIATION OF CONDITIONS RELATING TO EXTENSIONS AND ALTERATIONS TO THE AIRPORT

LONDON LUTON AIRPORT, AIRPORT WAY, LUTON

Date: 30th August 2022

Contents

Background

I am Andrew Lambourne, the chair of the Luton and District Association for the Control of Aircraft Noise, a community group which represents people affected by the noise and environmental impacts of Luton Airport.

Since December 2015 I have been a regular and active participant in the Noise and Track Sub-Committee of the London Luton Airport Consultative Committee, on which LADACAN also has a seat. I have participated in Department for Transport Noise Focus Groups; Airspace Change Focus Groups, Community Airspace Management Working Groups and a Community Nose Forum organised by the Applicant; the St Albans City and District Council Airport Working Group; community representative meetings with the CAA Board; meetings with the Independent Commission on Civil Aviation Noise (now disbanded), and am a member of the Airspace Change Organising Group (ACOG) Community Advisory Panel.

I attended the Luton Borough Council Development Control Meetings held in December 2013 to determine 12/01400/FUL and in November and December 2021 to determine 21/00031/VARCON.

I have a First Class BSc (Hons) degree in Electronic Engineering, specialising in Software Engineering, from the University of Southampton, and worked in IT research and development for most of my career. By way of examples, projects in which I have been involved have included design and analysis of reference surveys conducted by the Price Commission; processing of real-time text and data feeds for broadcast information and subtitling services; and development of real-time control systems.

I was elected in 2016 to chair the “Flamstead Future” community project to research and report to Flamstead Parish Council the community sentiment concerning local development proposals. I was elected to serve as a Flamstead Parish Councillor from 2017 to 2019, when I stood down to focus on the Flamstead Heritage Project which I directed from its inception in 2017 through to completion of restoration works in 2021, raising over £1m to avoid closure of a 12th-century Grade I Listed building.

Glossary

the Airport – London Luton Airport

the LPA – Luton Borough Council, the ultimate owner of the Airport

LLAL - London Luton Airport Limited (since 2021 trading as "Luton Rising") – the subsidiary company of the LPA, incorporated in May 1986, which owns the Airport on behalf of the LPA and whose Board (during the period 2012-2019) comprised of Members of the Council

the Applicant – London Luton Airport Operations Ltd, a company incorporated in 1998 which was appointed in 1998 to manage the Airport

LLA, LLAOL – synonymous with the Applicant

BAP – Bickerdike Allen Partners, an architecture, acoustics and technology consultancy retained as noise advisers to the Applicant;

the **Concession Agreement** – the agreement dated 20th August 1998 between the LPA, LLAL, LLAOL and London Luton Airport Group Limited, by which LLAOL would manage the Airport

the 2012 Application – the planning application reference 12/001400/FUL on the LPA Planning Portal, which was permitted subject to Conditions which the Application seeks to vary

the Application – the planning application reference 21/00031/VARCON on the LPA Planning Portal, which is the subject of this Inquiry

LLACC – the London Luton Airport Consultative Committee operating under the Department for Transport Guidelines for Airport Consultative Committees April 2014

NTSC – the Noise and Track Sub-Committee of the LLACC

mppa – million passengers per annum (a measure of airport throughput or capacity)

noise contour – unless otherwise specified in the context, a 92-day average Summer day or night plot on a map which shows lines joining areas enclosing at or above a specified level of noise impact, where each contour line is attributed a noise impact level measured or calculated typically over a 16 hour (day) or 8 hour (night) period and expressed in decibels (dB) LAeq, and encloses an area on the map normally expressed in square kilometres (km^2)

S106 Agreement – the agreement entitled 'Section 106 Town and Country Planning Act 1990 (as amended) Re London Luton Airport, Airport Way, Luton', 9th October 2017, between the Applicant, the LPA, LLAL and the Royal Bank of Scotland, relating to 12/01400/FUL (CD8.42)

LGA - Local Government Association

Causes and effects of non-permitted development of Luton Airport

1. Introduction

1.1 Uncontrolled growth

1. From the perspective of people living in local communities affected by the undisputed growth in the noise and environmental impacts of Luton Airport since 2012 (when options for increasing its capacity by some 9mppa were consulted on), the planning system has failed.

2. The 2012 Application received permission for controlled and balanced growth: increasing noise to be mitigated by gradual fleet modernisation; increased throughput gradually adding 9 million more passenger journeys (to and fro) to an already crowded surface transport infrastructure; and a gradual increase in numbers of flights by some 40%, all over a 15-year period to 2028.

3. Those like me who attended the December 2013 Development Management Committee heard all the voting Councillors in their summing up say (as if scripted) how concerned they were about the heavy environmental impacts but that they had confidence in the conditions and mitigations.

4. The reality, as I shall show, has been very far from the expectation which was set. Uncontrolled, financially-incentivised and demand-led growth of throughput at more than twice the balanced rate led predictably and inevitably to a breach of noise planning conditions within just four years. The passenger cap was reached two years later, nine years ahead of the schedule presented and agreed as the basis for the 2012 Application and permission. Such a rate of growth of throughput disregarded the 2012 environmental impact assessment and the fully justified carefully crafted conditions and obligations of the planning permission.

5. This accelerated growth was set back by the restrictions put in place during the COVID pandemic, but has now resumed. No evidence has been provided of effective means of control being used or even being available, and the option to operate within the existing planning conditions has not been evaluated. The long overdue strategy for long-term noise reduction available for review, so there cannot be confidence in any commitments regarding long term noise contour limits.

6. Those who opposed the 2012 Application on noise and environmental grounds, concerned about its threats to health, quality of life, climate and the nature and character of this essentially rural area, have since – quite understandably – been joined by many more who now feel betrayed by the Applicant and the LPA, who are jointly responsible for overseeing and controlling the impacts of the Airport. More local groups opposing further expansion of Luton Airport exist now than ever before, more people have expressed their opposition on the LPA planning portal than ever before, and the other Joint Local Authorities have made their opposition clear in representation.

7. LADACAN is not a campaign to close Luton Airport, but it is a community group representing people who feel utterly powerless in the face of a powerful, noisy and polluting industry which generates significant amounts of money for an airport owner that has consistently sought to drive that revenue upwards as rapidly as possible.

1.2 Pressure for expansion

8. We have witnessed over 15 years the continual pressure from LLAL for faster, greater expansion. Substantial sums of public money fund its investments in and applications for facilitating works, as well as preparation of consultation documents for DCO-scale airport business development based *inter alia* on discussions with airlines. The LLAL board (many Members of the LPA) and its Officers (many Officers of the LPA) would seem to be unqualified to lead or commission such discussions or projects under the terms of the Airport Act 1986. And (apart from determination of the proposed DCO) the LPA which owns the airport and benefits from the concession revenue, determines these facilitating applications.

9. Whilst on the face of it this is not improper, it causes mistrust. Where these actions appear to stray over the line set by the Airports Act 1986 is if they amount to management of an airport by proxy through financial incentive, commercial pressure or threat of sanction, by a company board not meeting the criteria set out in the Act for necessary qualification to manage an airport.

10. Concerns are shared by neighbouring local authorities, and echoed by external auditors. Ernst & Young has not (to date) signed off the LPA's accounts for 2018-19 or any subsequent year, and documented its concern over a lack of transparency in decision-making on airport investment. PriceWaterhouse Coopers recently resigned as auditors to LLAL after a disagreement over the valuation of its assets and capital projects. That these assets were funded by public money borrowed from the LPA or generated by Airport Concession revenues, for projects decided by Members and Officers of the LPA acting in the role of airport company directors under the veil of corporate secrecy, and therefore not open to public scrutiny, causes disquiet.

1.3 Importance of independent review

11. This Inquiry is the first time for 17 years (when the High Court ruled against a second runway) that any independent light has been shone on a Luton Airport planning decision – including the facilitating decisions already taken to pave the way for LLAL's significant further expansion DCO.

12. My evidence underpins a strong call for genuine rather than on-paper commitment to achieving and maintaining local planning balance, overseen and governed by the high standards of probity which in 2019 MHCLG assured us the government expects from local planning authorities under Localism.

13. The conflict between the dependence of the LPA on revenue from the Airport (revenue which grows in proportion to its passenger throughput, along with its noise and emissions) and its role in setting and potentially enforcing the Airport's planning conditions and obligations has caused and still causes deep concern. Guidance from the Committee for Standards in Public Life is that conflicts of interest caused by the existence of commercial companies of planning authorities should be resolved so that they are genuinely at arm's length.

14. As I review the incentives, actions, lack of actions, and agreements which led to serious breaches of noise control conditions occurring within four years of development permission being agreed, my evidence demonstrates that these concerns are well founded.

15. During the five years since the first breach, local communities have not seen effective actions to remedy the cause and bring the airport operation back within it planning limits. During the years while the breaches increased in magnitude, the focus of the Applicant was on paving the way for a transitional arrangement by way of retrospective application to the LPA (also one of the parties to the Luton Airport growth incentivisation scheme) to legitimise the breach.

16. After three and a half years of repeated attempts via poorly constructed planning applications and some six rounds of consultation to date, this Inquiry now has to navigate an opaque and apparently obfuscated set of overlaid documents which require a six-page roadmap to enable people even to appreciate what applies and what has been superseded - and even then, updates to information are scattered in responses to Regulation 25 requests rather than being in context.

17. Our greatest concern is that, regardless of the outcome of this Inquiry, unless some fundamental and fully effective changes are made to the governance, oversight and development control of passenger throughput and noise at Luton Airport, demand-led breaches will just happen again.

18. My evidence shows why this is not a planning application which is straightforward to determine simply by weighing benefits versus harms. I set out a well-documented history indicating that the breach of conditions was as a result of over-rapid growth in passenger throughput. The pressure of financial incentivisation and corporate performance targeting, the ignoring of clear trends and environmental reports, a demand-led business growth culture, and an apparent lack of effective processes or indeed will to control and mitigate the growing noise and environmental impacts of Luton Airport are the most likely causes of breach, not French air traffic controllers. Therefore it would clearly be pointless to affirm the current conditions or to impose new conditions without also addressing these endemic issues.

2) Ownership and management

19. In this section I provide information which shows that:

    - The Airports Act 1986 requires Councils to transfer airport ownership to a separate company, ensuring that such a company is either qualified to manage the airport or appoints a suitably qualified third party to manage it
    - The LPA responded by forming LLAL which took on ownership and management of the Airport in 1987
    - In 1998, LLAOL was formed as part of a PFI project to achieve new investment, took on the LLAL airport management staff, and was awarded a 30-year operating concession by LLAL

20. Sections 13 and 14 of the Airports Act 1986[1] made provision for the Secretary of State to require councils to divest their ownership of airports with a turnover of over £1 million. With regard to management of such an airport, Section 17(1) of the Airports Act 1986 states that:

    "(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"

21. Section 17(2) specifies two mutually exclusive airport management models: either management by a public airport company meeting the qualification test of Section 17(1), or management by an independent and suitably qualified third party:

    "(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."

22. The LPA complied with the requirement to transfer ownership: LLAL was incorporated May 1986 and began trading on 1 April 1987 as a wholly owned subsidiary of the LPA. Ownership of the

[1] CD10.02 'Airports Act 1986', 1986, and as amended

airport was transferred from the LPA to LLAL on that date[2] and LLAL continued to manage the Airport until 1998.

23. In August 1998, as part of a Public/Private Finance Initiative to achieve investment in the Airport, three executive directors of LLAL became directors of a new company, London Luton Airport Operations Limited (the Applicant)[3] and a 30-year operating concession agreement was reached whereby the Applicant assumed responsibility for the management of the airport[4].

    LLAL's 1999 Report and Accounts[5] confirm this arrangement, which appears to accord with the second management option evidence in paragraph 21 above, ie management by an independent and suitably qualified third party:

    "Under the terms of this contract LLAOL was granted a concession to operate the airport for a period of 30 years ('the concession period') and a lease over the company's land and buildings. In return LLAOL undertook to pay an annual concession fee to the company and, subject to the continuing growth of passenger numbers, fund an extensive capital investment programme."

3) Background to the 2012 Application

24. In this section I provide information which shows that:

    - Capacity expansion at the Airport is a strategic objective of the LPA's Executive and LLAL
    - LLAL put forward detailed plans in 2012 to increase capacity to 18mppa by 2025/28
    - The Applicant responded with a less ambitious and lower cost scheme to expand to 16mppa
    - The Executive required the Applicant to achieve 18mppa or risk concession termination
    - The Applicant applied for permission to increase capacity to 18mppa based on LLAL's plans
    - The timeframe for the expansion to 18mppa was a fifteen-year period to 2028

25. In July 2012 the LPA's Executive was recommended by the Company Secretary of LLAL (who was also the LPA's Director of Commercial and Transformational Services) to agree a report[6] ("the Report") recommending extension of the Airport Concession Agreement to 31st March 2031. The

[2] 'London International Airport Limited Annual Report Accounts 1988', (filed under London Luton Airport Limited on Companies House website), pp 8
[3] 'London Luton Airport Operations Limited Annual Report And Financial Statements, Period Ended 31 March 1999', Companies House website, pp 8
[4] CD8.47 'Fully redacted Concession Agreement relating to London Luton Airport', the LPA, LLAL, LLAOL, London Luton Airport Group Limited, 20 August 1998
[5] 'London Luton Airport Limited Financial Statements Y/E 31 March 1999', Companies House website, pp 11
[6] CD13.54 'LBC Executive Resolution', LPA, July 2012

reason given was *"To achieve expansion at the Airport to play a more significant role in Luton's economic growth"*.

The Report acknowledges in its section 2 that:

"Passenger capacity, and its effect on the sustainability and competitiveness of the airport, has a significant impact on a range of benefits to the people of Luton, including the use of Gift Aid to support the charitable objectives of local organisations, and contributions to reducing Council Tax through payments for services, and shareholder dividends made, to Luton Borough Council."

26. The Report goes on in its section 3 to say:

"LLAL has a long term vision of: …
an efficient airport, optimised within its existing boundary and using its existing runway, with capacity for 18 million passengers per annum (mppa) by 2025/28"

In its section 4 the Report acknowledges proposals by the Applicant to invest £63m to increase operational capacity to 16mppa by 2028 on a demand-led basis, but notes that LLAL's advisers considered the works would only deliver 13.5mppa while passenger growth in the South East would lead to demand at the Airport exceeding 18mppa over that timeframe, and that LLAL's board had on 14th May 2012 rejected the Applicant's proposal as *"unlikely to meet the long-term objectives of their vision for the development of the airport*".

27. In its section 5, the Report notes that the extant Concession Agreement did not compel the Applicant to invest, and that LLAL had investigated other procurement routes to achieve a more significant role for the Airport in the Luton economy, but that would require termination of the Concession Agreement for which a limited decision window was available.

28. In its section 8 the Report states that LLAL had prepared a design for an 18mppa airport, and its programme "futureLuToN:Optimisation" proposed a new concession to secure development to 18mppa by 2025-2028 and a long-term vision for further expansion. The Report's alternative option was to extend the Concession Agreement and require the Applicant *"to submit a planning application that would be suitable to meet LLAL's objectives, be fully consulted upon, and which would be in line with national, regional and local, planning and aviation policy frameworks."* This option was adopted, as the decision sheet[7] and the 2014 accounts of LLAL confirm:

In August 2012 a supplemental agreement to the concession contract was reached between LLAL and LLAOL. This agreement commits the operators to undertake a significant programme of development works to increase the Airport's capacity to handle throughput of up to 18 million passengers per year, in return for an extension of the Concession Period to March 31st 2031. There have been no other alterations to the concession contract.

[7] CD13.53 'LBC Executive decision sheet', LPA, July 2012

29. The Goals and Objectives sections 17 and 18 of the Report concludes by saying:

"In short, the objectives adopted by the LLAL Board were: to secure significant investment in developing the airport, to maintain and increase revenue to LLAL through increasing passenger numbers, to avoid taking on financial and operational risk in securing that development, and to improve the ability of the airport owner to influence the future of the airport." (our underline)

30. In accordance with that agreement, the Applicant applied for permission for works to increase capacity to 18mppa, and its Revised Masterplan 2012[8] (which strengthened the noise control provisions) acknowledges in Section 1.5 both the accord reached with LLAL and the agreement of both parties on the works (based on LLAL's plan) and the timeframe:

"LLAOL and LLAL have subsequently reviewed their respective proposals and agreed that a single planning application should be prepared and submitted by LLAOL. Both parties have agreed that the planning application should seek consent to improve passenger facilities and enable the Airport to accommodate 18 mppa by 2031." (our underline)

31. Section 9.10 of the Revised Masterplan confirmed upper end growth forecasts along with the associated timeframe (ATMs meaning Air Transport Movements, ie flights):

Year	mppa	ATMs-000s
2013	10.3	112
2014	10.8	116
2015	11.2	118
2016	11.7	121
2017	12.1	124
2018	12.6	128
2019	12.9	130
2020	13.4	132
2021	14.3	137
2022	14.8	141
2023	15.4	144
2024	15.8	146
2025	16.6	150
2026	17.3	154
2027	17.7	156
2028	17.8	157
2029	17.8	157
2030	17.8	157
2031	17.8	157

Figure 9.1 - Upper end passenger and associated ATM unconstrained demand forecasts for LLA
Source: LLAOL (2012)

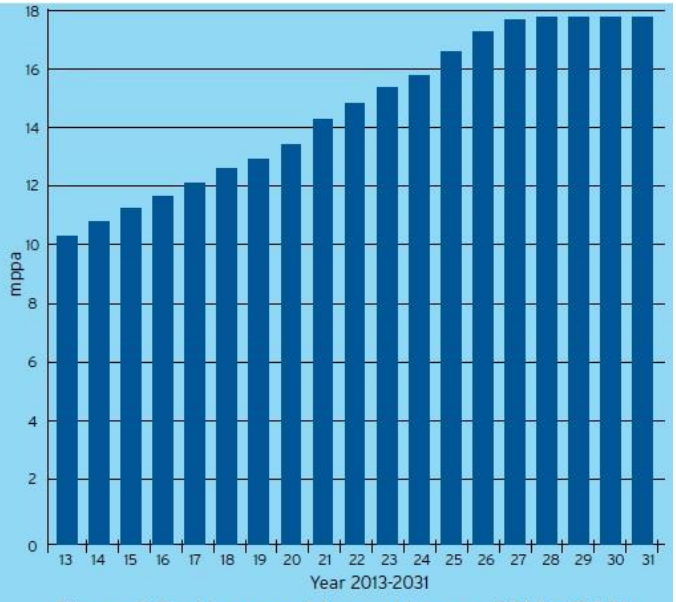


Figure 9.2 - Upper end forecast mppa 2013 - 2031
Source: LLAOL (2012)

Permission for this development was agreed at a planning meeting in December 2013.

[8] CD8.37 'Masterplan 2012', London Luton Airport Operations Ltd, Sep 2012

4) Essential planning controls

32. In this section I provide information which shows that:

- The 2012 Application was granted in light of comprehensive evaluation of environmental impacts and the means of mitigation and control
- The condition limiting noise contours is a primary mechanism of securing noise mitigation
- The passenger cap is also a key mechanism in ensuring (inter alia) noise control

33. During consultation on the 2012 Application, the relationship between numbers of passengers and aircraft movements, fleet modernisation and noise was set out in documents including:

- a comprehensive Environmental Statement[9];
- the associated noise reports[10]; and
- the Planning Officer's report and recommendation[11].

The Planning Officer's report contained several noise control caveats including in the first bullet point of its Paragraph 110:

"Controlling the noise impact to the levels indicated for 2028 requires that a substantial part of the airline fleet is changed to modern, low noise variants of types currently operating. The primary mechanism put forward by the applicant for ensuring that this will happen is by way of a condition limiting the extent of key daytime and night time aggregated noise contours."

34. Condition 10 (as renumbered after the discharge of noise conditions) includes the following provision:

"The development shall be operated in accordance with the Noise report approved on 2 March 2015 (ref: 14/01519/DOC), including providing details of forecast aircraft movements and consequential noise contours as set out in that report."

35. As shown in paragraph 31 above, the Revised Masterplan[12] indicated an upper-end trajectory of broadly linear growth in passenger numbers and aircraft movements (a trajectory reiterated by the Applicant in 2014[13]) at a rate designed to provide sufficient time for fleet modernisation.

[9] CD6.02 2012 Application Environmental Statement and its associated appendices
[10] See for example CD13.14 Bickerdike Allen Appendix H Noise extract, Dec 2012
[11] CD09.08 Development Control Committee Report, Dec 2013
[12] CD8.37 LLA Revised Masterplan, 2012, and associated 2012 Application documents
[13] CD8.29 LLA RNAV consultation extract, April 2014

36. The difference between the potential of 'capacity' and the reality of 'throughput' was clarified in an Opinion[14] issued in advance of the planning meeting for the 2012 Application, which made it clear in the context of an argument concerning whether the 'potential' or the 'declared' capacity delivered by the proposed works was what counted in determining whether the 2012 Application was an NSIP or not. In relation to the passenger cap condition, the Opinion states:

"The whole purpose of a planning condition of this sort is to limit what otherwise might be capable of being provided and ensure that it is not provided.

Therefore in those circumstances, not only does the condition control and limit the traffic, noise and other environmental and planning effects of the development, the condition also has the effect of ensuring that the proposed airport-related development is not NSIP." (our underline)

This makes it clear that the passenger cap condition is an integral part of controlling noise and other environmental impacts.

37. The appropriateness of the noise contour values, and the importance of fleet modernisation, was confirmed by the Applicant's agent prior to determination of the 2012 Application[15], including:

"The measures for noise mitigation proposed by LLAOL are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development."

38. The importance of the specified levels of noise contours was also established in correspondence ahead of the planning meeting for the 2012 Application, where it was argued and agreed that the actual levels of noise in 1999 would carry forward as the levels not to be exceeded to accord with the Local Plan[16].

5) Monitoring and reporting obligations

39. In this section I provide information which shows that:

- The S106 agreement requires reporting in order to make the conditioned noise impacts clear
- Such reporting was regularly provided by the Applicant to the LPA during the period 2014-2019
- All parties had adequate visibility of the trends in relevant noise and environmental indicators

[14] CD8.18 'John Steel QC legal opinion', John Steel QC, 39 Essex Chambers, Nov 2013
[15] CD13.25 'Appendix 6 to London Luton Airport application - Terence O'Rourke letter – noise', Oct 2013
[16] CD13.30 'LBC letter to Richard Buxton', LPA, Dec 2013

- The LPA had an implied obligation to monitor performance against the S106 agreement
- The Applicant had a legal responsibility to operate the Airport in accordance with the S106

40. The Noise Report[17] submitted on behalf of the Applicant during the 2014 Discharge of Conditions 11-14 (original numbering), and bound into the S106 Agreement, states:

    "From the 1st January 2014 forecast aircraft movements and consequential noise contours (Day, Night and Quota Periods) for the forthcoming calendar year shall be reported on the 1st December each year to the Local Planning Authority, which shall utilise the standard 92 day summer contour."

41. Consequential noise contour information is provided to the Applicant by its noise advisers BAP in annual reports of previous and forecast 92-day Summer noise contour areas each November[18].

42. Reporting of numbers of flights, passengers, current year actual and next year forecast noise contours and contour exceedances is provided by the Applicant to the LPA as part of its Annual Monitoring Report, examples of which are provided for the period between 2017 and 2019[19].

43. The Applicant's Quarterly Environment Reports contain Key Performance Indicators required for planning control monitoring[20], and these are reviewed by LLACC and NTSC and available online.

44. Section 4(d) of the S106 Agreement contains a clear Obligation on the Applicant *"not to carry out the Development or conduct the operation of the Airport otherwise than in accordance with this Agreement",* the only exception being *"in accordance with a planning permission granted after the date of this Agreement".* To me this indicates that such a planning permission must predate Development not permitted by the original permission.

45. The S106 Agreement obliges the Applicant to pay for monitoring, and by reverse obligation the LPA's Director of Planning to perform monitoring, of adherence to terms of the Agreement:

"4. The Planning Obligations – Operator: …

4.1(c) to pay to the Council on the first Working Day following 1 January 2017 and on the first Working Day following the first of each subsequent January (or in either case, if later, within 28 days of the date of receipt by the Operator of an invoice for the same from the Council) the sum of £15,000 (fifteen thousand pounds) in respect of the monitoring by the Director of Planning of the terms of this Agreement".

[17] CD13.47 'Noise Report', BAP, Dec 2014
[18] For example CD8.07, CD13.15, CD13.18, CD13.22 'Summer noise contour reports', BAP, Nov 2016-Nov 2019
[19] See CD8.23 – CD8.26, 'LLA Annual Monitoring Report', LLA, 2016-2019
[20] LLA website archive can be found by searching online "Luton Airport Quarterly Monitoring Reports"

46. In 2019 LADACAN met and corresponded with the LPA's then Director of Place and Infrastructure to identify the mechanism for and effectiveness of this monitoring, but it appeared[21] that there was no formal process in place. In July 2020 and October 2020 respectively the LPA's Overview and Scrutiny Board and its Executive reviewed the Applicant's 2019 Annual Monitoring Report, but I have not seen evidence of such scrutiny prior to that date, and although we asked the LPA to disclose such evidence, none has been provided.

6) Failure to control noise

47. In this section I provide information which shows that:

- The S106 includes a commitment on the Applicant to identify and avoid adverse noise trends
- The Applicant's function includes controlling the rate of release of aircraft slots
- The Applicant's noise adviser was on hand to assist as required to achieve compliance
- There is an industry-standard ICAO 4-point plan indicating how noise can be controlled
- The LPA made clear that the Applicant is responsible for bringing noise back under control
- The Applicant has failed to control noise or to indicate how noise will be reduced longer term

48. Section 3.2 headed "Noise Contouring" in the Noise Report referred to in paragraph 40 above confirms the comprehensive contour reporting to be sent annually to the LPA and concludes: *"With respect to 'Trends' and 'relevant features' identified in the annual reports, LLAOL will study any adverse trends or features and seek to establish causes, and what actions need to be taken by operators or LLAOL to avoid repetition. The actions required by operators could address detailed operational decisions which would be resolved at the regular "Flight Ops" Committee meetings."* (our underline)

49. I am aware that "Flight Ops" meetings are meetings of the Airport's FLOPSC (Flight Operations Sub Committee), where the Applicant meets airline operational representatives (including base captains and chief pilots) to discuss operational issues. A feedback path therefore exists.

50. Airports submit advance seasonal capacity declarations[22] to the independent slot coordinator Airport Coordination Ltd (ACL), which allocates slots in accordance with best practice as set out in worldwide guidance[23].

[21] CD8.14 'Email LBC to LADACAN re Luton Airport scrutiny committee', Laura Church, Feb 2019
[22] See CD13.32-CD13.39, 'LLA Summer season capacity declaration', LLA, for the period 2012-2019
[23] CD8.43, 'Worldwide Slot Guidelines', Airports Council International, International Air Transport Association, Worldwide Airport Coordinators Group, Apr 2020

51. According to the worldwide guidance, responsibility for capacity declarations sits with the airport managing body[24]. Yet the Planning Statement[25] accompanying the Application proposes as one of its mitigation measures in section 4 in response to the 2017 breach:

*"**Increased frequency and detailed cooperation between the Flight Operations Department and the Business Development Department in LLAOL**.*

4.3.27 This ensures that the Flight Operations Department works closely with the Business Development Department to ensure that passenger growth is managed more effectively in line with noise limitations."

I would have expected directors of Applicant, a professional airport operating company, knowing it was subject to binding planning conditions, would have ensured effective communication was occurring between key departments, without apparently needing to introduce it in response to breaches of condition as the Application admits. This suggests lack of professionalism.

52. The terms of reference between BAP as Supplier of acoustics consultancy and the Applicant as its Customer from December 2017 (we requested disclosure of the terms of reference applicable prior to that date but they were not provided) include[26]:

> The Supplier shall also support the Customer in its continual work to comply with the planning conditions relating to noise issued in 2014 with the planning reference 12/01400/FUL, providing guidance and support wherever necessary.

Given this, and in light of the growth trajectory and rate of growth of noise contour areas, it would be reasonable to expect intervention or support provided by the noise consultant to the Applicant in its *"continual work to comply with the planning conditions relating to noise issued in 2014"*, particularly given the long-running breaches of those conditions since 2017.

53. I requested and reviewed BAP reports from the material period[27] and they clearly document the increasing noise contour areas up to and through the breaches, but the only evidence I saw of any "support" is a draft Transitional Arrangement report[28] which proposes that the solution to the breach of noise planning conditions would be to apply to increase them.

54. I did not find in the BAP reports any mention of the "ICAO balanced approach" promoted by the International Civil Aviation Organisation to manage aircraft noise[29] which is prefaced on the ICAO

[24] Ibid page 26 para 6.1.1 and 6.2.1
[25] CD1.07 'Planning Statement', Wood, Jan 2021
[26] CD13.41 'Scope of services as part of the agreement between Bickerdike Allen Partners LLP for consultancy services', disclosed by Wood, dated Dec 2017
[27] See CD8.06 to CD8.08 inclusive, CD13.15 to CD13.23 inclusive, CD13.48
[28] CD13.48 'A9501-R06D-DC Draft transitional arrangements', BAP, Jul 2017
[29] Search online "ICAO balanced approach"

website with this statement:

"Aircraft noise is the most significant cause of adverse community reaction related to the operation and expansion of airports. This is expected to remain the case in most regions of the world for the foreseeable future. Limiting or reducing the number of people affected by significant aircraft noise is therefore one of ICAO's main priorities and one of the Organization's key environmental goals." (Retrieved on 24 August 2022).

55. The four elements of the ICAO balanced approach are:

- reduction at source (quieter aircraft);
- land-use planning and management;
- noise abatement operational procedures (optimising how aircraft are flown and the routes they follow to limit the noise impacts); and
- and operating restrictions (preventing certain (noisier) types of aircraft from flying either at all or at certain times)

56. In light of the noise contour breach in 2017, after a meeting with other concerned authorities, the LPA wrote to the Applicant[30] requiring a number of actions:

"Accordingly could you provide a detailed Action Plan setting out how the Airport Operator proposes to remedy the breach of this condition. Specifically the LPA requires the Action Plan to set out, in the short term, how and when the breach of condition can be remedied, together with a timetable for implementation of actions to address the breach and mitigate any harm. Over the longer term the Action Plan should set out the strategy for the future. Although I note that the period specified in the condition for the production of a strategy was 'within five years of the commencement of development' (i.e. by 1 January 2021), at that time it was not anticipated that the airport would grow so rapidly. With the breach of the condition arising from the rapid growth of the airport, it is imperative that the production of this strategy be brought forward." (Our underlining)

57. The Applicant responded with a plan for modest restrictions which it sent to its airline customers the same month[31], but by 2019 it was clear this plan was inadequate since both the day and night noise contour areas had increased, and the day noise contour had also been breached. There is no evidence that this Plan was validated by BAP using contour modelling to verify its adequacy. The LPA wrote again[32] in unambiguous terms:

[30] CD8.33 'Letter LBC to LLAOL re breach', Laura Church LBC, Feb 2018
[31] CD8.35 'Letter LLA re noise restrictions', LLAOL, Feb 2018
[32] CD8.34 'Letter LBC to LLAOL re breach', Laura Church LBC, Nov 2019

"In February 2018 the Local Planning Authority (LPA) wrote to LLAOL in relation to the breach of planning condition 10 ... and we sought to understand ... the mitigation plan that LLAOL proposed to introduce in order to bring the airport operation back in line with the requirements of the planning condition."

"In March 2018 LLAOL responded by providing a copy of the steps that were to be implemented for summer 2018 to address the breach of the night noise contour, together with measures to prevent a breach of the day noise contour. I understand from the information that we received in the last few days ... that the measures have not been successful and that for the summer period in 2019 not only has the night noise contour limit again been breached, but the day noise contour limit has also been exceeded."

"However, we have received today the Bickerdike and Allen Report covering the actual 2019 contours and forecast 2020 contours and that would suggest that the breach of the condition for both day and night time will again occur in 2020 and that, although the night time breach may be less severe than this year, the breach for the day period will be greater than in 2019."

"It would appear to me that the primary reason for the inability to comply with the condition is the increase in aircraft movements, which has taken place at a faster pace than the roll out of the new generation aircraft and consequently the noise level has increased disproportionately. Whilst the airport may seek to incentivise the use of modern quieter aircraft, there is no guarantee that this is going to have a significant effect. It is, therefore, critical that action is taken to address the noise breach which may need to include managing the number of movements."

"I understand that on 1 January 2020 LLAOL will be producing its strategy to show how the area within the 57dB(A) day time contour and the 48dB(A) night time contour can be reduced by 2028, and it may be that your interim approach is to reduce the number of air traffic movements. It would be good to see this strategy in order to be reassured that LLAOL are taking the issue of the noise contours seriously and are seeking to ensure that the local community are not impacted by the negative aspects of the airport's growth." (Our underlining)

58. As matters turned out, the day and night contours for 2020 were reduced below the permitted limits – though not as a result of any action taken by the Applicant, but because of the travel restrictions imposed during the COVID pandemic.

59. The Noise Contour Reduction Strategy, required under planning condition 10 to be delivered by January 2021 for approval by the LPA, but then requested in advance of that (see paragraphs 56 and 57 above), has not yet been finalised and submitted or signed off: its status remains "in abeyance" according to the LPA's consultant Planning Officer in reports to the LLACC. We asked the LPA for information justifying holding this in abeyance but none has been provided.

60. The most recent entry on the Luton planning portal under reference 20/00131/DOC is a letter from the Applicant dated 4 January 2021:
"We are now working on a new version of the Noise Contour Reduction strategy… We will submit to (sic) *completed strategy to Luton Borough Council in the near future."*

61. In the light of the information documented in this section, I doubt the Applicant's willingness or capability to remedy the breaches by taking the steps necessary to operate the Airport within its passenger cap and noise contour limits. A firm request for action to remedy the first breach was met with an Action Plan which self-evidently tinkered around the edges and did not appear to have been validated. I find no evidence that the Applicant was willing or able to reduce its noise contours to the extent necessary to operate within its planning limits by using all the options of the ICAO balanced approach including reducing numbers of flights, nor apparently did it intend to restrain passenger throughput below 18mppa given no mechanism was put in place to do so.

62. As the written representation to PINS from the Joint Local Authorities reiterates:
"The (Hertfordshire) *County Council has an in-principle objection to growth proposals at LLA whose origins are founded in mismanagement of operations since planning permission was granted in 2014 for the Airport to grow to 18 mppa."* (PDF p22); and
"The requirement to reduce noise contours is a critical requirement imposed on the Airport and is entirely consistent with Government expectation that 'noise caps ... provide future certainty over noise levels to communities'. Unfortunately, historic and ongoing mismanagement of growth at the Airport has served to ensure that the 'certainty' expected by Government is exactly what communities adversely impacted by aircraft noise associated with the Airport have not experienced." (PDF p205)

7) Growth Incentive Scheme

63. In this section I provide information which shows that:

- A Growth Incentive Scheme ("GIS") was signed between the LPA, the Applicant and LLAL in January 2014, one month after the LPA agreed the 2012 Application
- The GIS financially incentivised airlines to deliver year-on-year passenger number growth
- The GIS was set up by LLAL to encourage passenger growth, but has other influences
- There is no obvious reference to planning conditions or noise controls in the GIS

64. A 2017 Deed of Amendment and Restatement (the Deed) restates with additional clarification a previous Deed of Amendment signed in January 2014 between the Applicant, the LPA and LLAL[33]. It describes a Growth Incentive Scheme (GIS) which financially rewards year-on-year growth of passenger throughput at the Airport. The Applicant receives a rebate of part of the Concession fee, which is passed on to airlines meeting tests of "Growth" or "Super Growth" to incentivise year-on-year increases in passenger numbers at Luton. Annex A shows that this incentivisation continued after the breach was forecast, and the highest payment was in the first year of breach. Annex D gives further details. There is no obvious reference to restraint in the GIS.

65. The 2014 Company Accounts of London Luton Airport Ltd[34] mention the extended Concession Period; its 2015 Accounts repeat the reference and also describe the subsequent amendment to the Concession Agreement to instantiate the GIS, and confirm its growth-oriented objective:

> Concession Period to march 31st 2031. The concession agreement was further amended in January 2014 to provide for a scheme to rebate the Concession Fee Rate payable by the airport operator in certain circumstances, in order to encourage passenger growth.

66. I consider it would be unprofessional for an airport operating company already party to a growth incentive scheme to encourage increased throughput, then to sign a Section 106 agreement that prohibits carrying out development or conducting the operation of the airport otherwise than in accordance with defined noise controls; without first checking for potential conflict between the commercial effects of both agreements.

67. Since the GIS resulted in reduced costs for airlines delivering consistent year-on-year growth, it could have effects on the airport business over time:

    1) Consolidation – airlines benefiting from the reduced costs would have competitive advantage which may favour their growth as opposed to that of an unrewarded competitor, consolidating their position and perhaps reducing diversity in the customer mix (which has potential risks of increasing the dependence of the business on those airlines, and increases the leverage of those airlines over the business)

    2) Fleet influence – airlines seeking to achieve the rewards could schedule larger aircraft or more aircraft to add passengers, perhaps by displacing business from elsewhere, which if done before aircraft were modernised would result in increased noise

    3) airlines depending on the reduced costs may apply pressure to sustain the scheme.

[33] CD8.12 'Deed of Variation' between the LPA, LLAL, the Applicant and London Luton Airport Group Limited, Aug 2017

[34] Available from the Companies House website for company number 02020381

8) Targeting of higher growth rates

68. In this section I provide information which shows that:

    - The LPA's Executive Committee and its Overview and Scrutiny Board each regularly review corporate RAG (red, amber, green) performance report across a number of areas
    - One such area is Luton Airport passenger numbers, reviewed against annual targets
    - Targets were to be agreed in Baseline Review Meetings between the LPA and the Applicant

69. Corporate Performance Reports and Datapacks (CPRs) summarising the LPA's progress against targets in various areas including passenger growth at the Airport were regularly reviewed by the LPA's Executive and its Overview and Scrutiny Board during the breach period from 2016-2019[35].

70. The 2016-2017 CPR[36] shows under 'Ref 5' on page 2 an annual target of *"14.3m London Luton Airport passengers"*, ie 1mppa more than balanced growth, and the report by Mark Turner (LLAL Customer & Commercial Directorate) on page 8 of that CPR notes:

    "Passenger numbers increased by 499,536 (18.2%) in the fourth quarter of the 2016 financial year compared to the equivalent period of 2015, and exceeded the target for the period by 8.9%. London Luton Airport remains the fastest growing airport in the UK, and is increasing its market share of both the London system and UK aviation generally. The rate of growth is acknowledged (by the airport operator and airlines) to the Growth Incentive Scheme introduced and funded by London Luton Airport Limited." (our underlining).

71. We asked Mr Turner (now the LPA's Monitoring Officer and also Executive Director, Governance at LLAL, now trading as Luton Rising) to clarify the position and he replied in a letter to LADACAN (see Annex A) quantifying the targets and the concession fee rebates mentioned above.

72. Both the "modelled" and the "target" values reported on by Luton Rising are significantly larger than the upper end Trajectory (shown by the blue line) which was set out by the Applicant in the 2012 Application (see paragraph 31) and repeated in its community consultation in April 2014[37].

73. Mr Turner's letter indicates that the targets were forecasts provided by the Applicant, however the CPRs present them as targets in common with other performance indicators.

74. I see no evidence that the CPRs make any connection between the targeted growth in passenger numbers and its likely effect on the noise control conditions set by the LPA, suggesting that the

[35] See CD17.06-CD17.16, example Corporate Performance Reports and Datapacks from the period 2016-2019
[36] CD17.10 'CPR Q4 2017 - 3.1 Appendix Ai - Corporate Performance Data Pack for Q4 2016-17', LPA
[37] CD8.29 extract from 'Airspace Change Proposal: stakeholder consultation', LLA, Apr 2014

Executive and the Overview and Scrutiny Board were either not aware of the planning conditions governing the balance between throughput growth and fleet modernisation and noise, or simply chose or felt able to ignore it. This raises questions of governance and communication within the LPA to add to similar concerns relating to the Applicant.

75. The figures supplied by Luton Rising and from 2012 Masterplan[38] are shown in Chart 1 below:

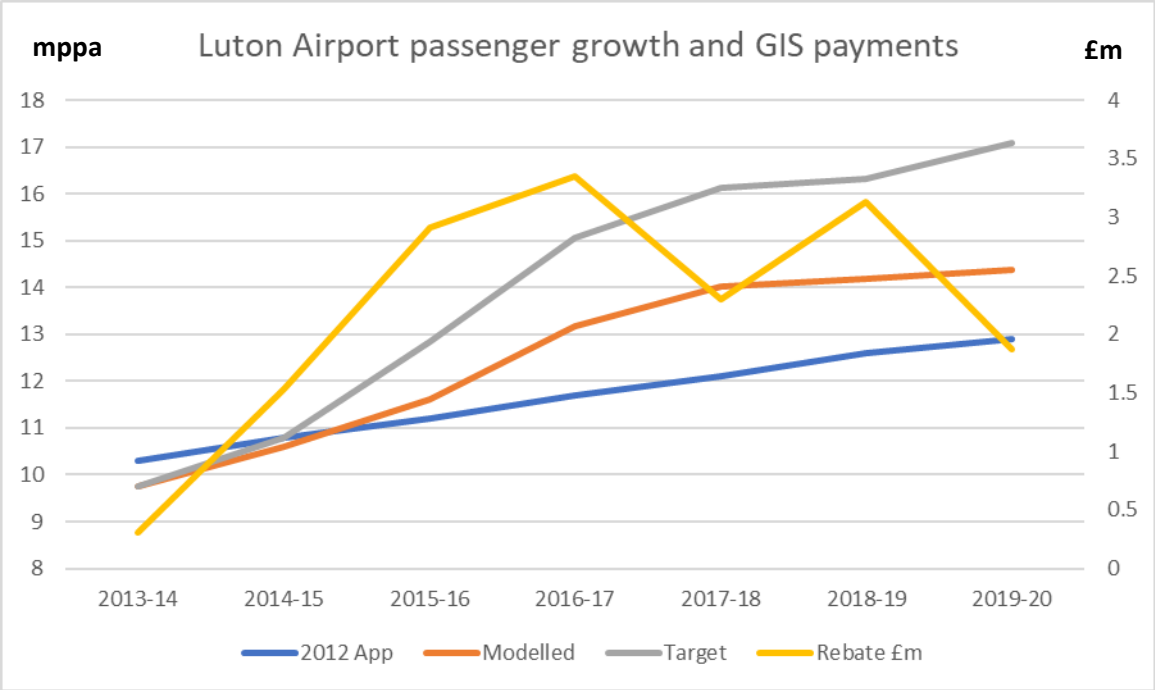


Chart 1: *Left-hand axis shows annual throughput in mppa, with the Blue line showing the 2012 Application trajectory; the Orange & Grey lines the LLAL Modelled & Target values. The right-hand axis shows the concession fee rebates in £m, the LLAL figures indicated by the Yellow line.*

76. The Deed referred to above in paragraph 64 above states in its paragraph 5.16:

"The parties shall hold a meeting in April of each Applicable Period to discuss and agree the number of Passengers carried by an Airline User in the previous Applicable Period in order to settle the Passenger Threshold for the current Applicable Period, and agree the Incentive Amount to be awarded to all Qualifying Airlines and/or Super Growth Airlines (the 'Baseline Review Meeting')."

Since all Parties to the Deed were present, including the Applicant, it is inconceivable that the meetings had "no knowledge" of the impending, actual and worsening breaches of condition.

[38] CD8.37 'Revised Masterplan', London Luton Airport Operations Limited, Sep 2012, p34 Figure 9.1

77. We asked the LPA to disclose minutes of the Baseline Review Meetings so that the origin of the Passenger Threshold target values would be clear to the Inquiry, but the request was declined.

78. On the basis of the information presented here, it is clear that the LPA, LLAL and the Applicant had knowingly established a quite different and more rapid growth agenda for the passenger numbers at the Airport than had been presented in the 2012 Application, apparently without considering whether fleet modernisation would be achieved similarly aggressively, or knowing but ignoring the expected and actual rate of modernisation, and apparently without giving due consideration to the predictable impact on the noise contours set by the LPA.

9) Growth in throughput and noise 2014-2019

79. In this section I provide information which shows that:

- The effect of the targeted growth rate on the growth of noise contours was obvious
- No effective control was applied to prevent worsening breaches of condition

80. Using flight movement figures from QERs and AMRs published by the Applicant, I have produced Charts 2 and 3 below showing derived numbers of flights mid-June to mid-September each year during the day and at night (corresponding to the 92-day noise contour calculation periods) and the actual day and night 92-day contour areas calculated by BAP, as used in assessing noise impact against the planning conditions. The red bar shows the condition 10 noise contour limit agreed as part of the permission for the 2012 Application.

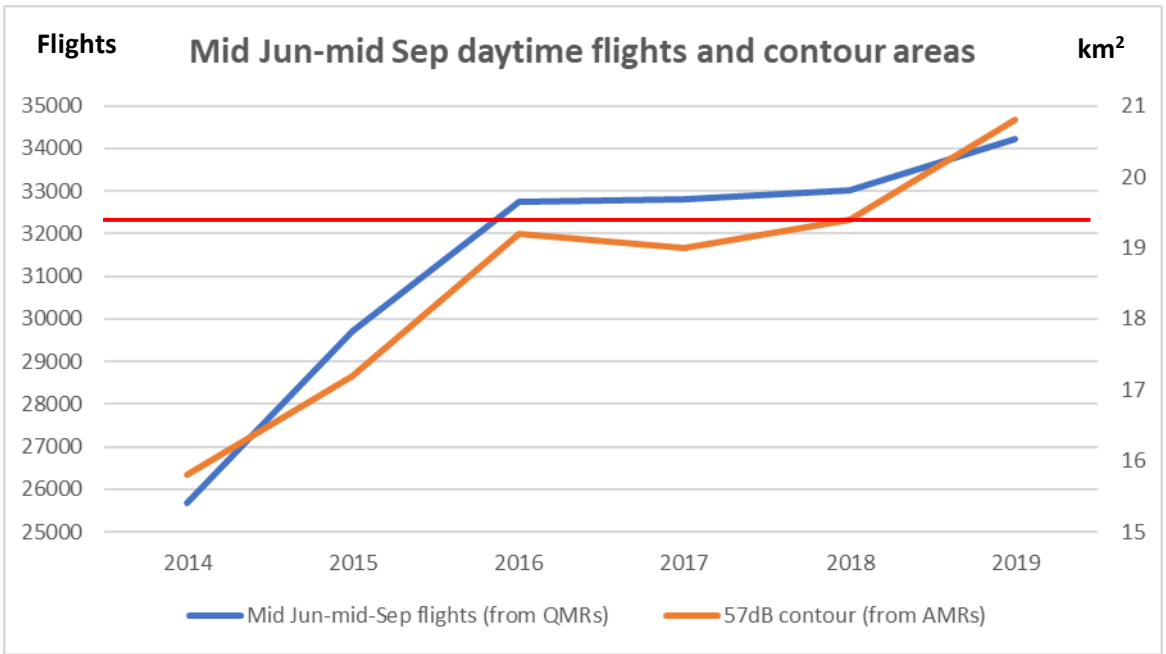


Chart 2: Left hand axis and blue line shows the numbers of daytime flights (derived from QERs); right-hand axis and orange line the actual daytime 57dB LAeq 16h noise contour areas (km²) given in the AMRs, 2014-2019. The red bar shows the daytime noise contour area limit (19.4 km²).

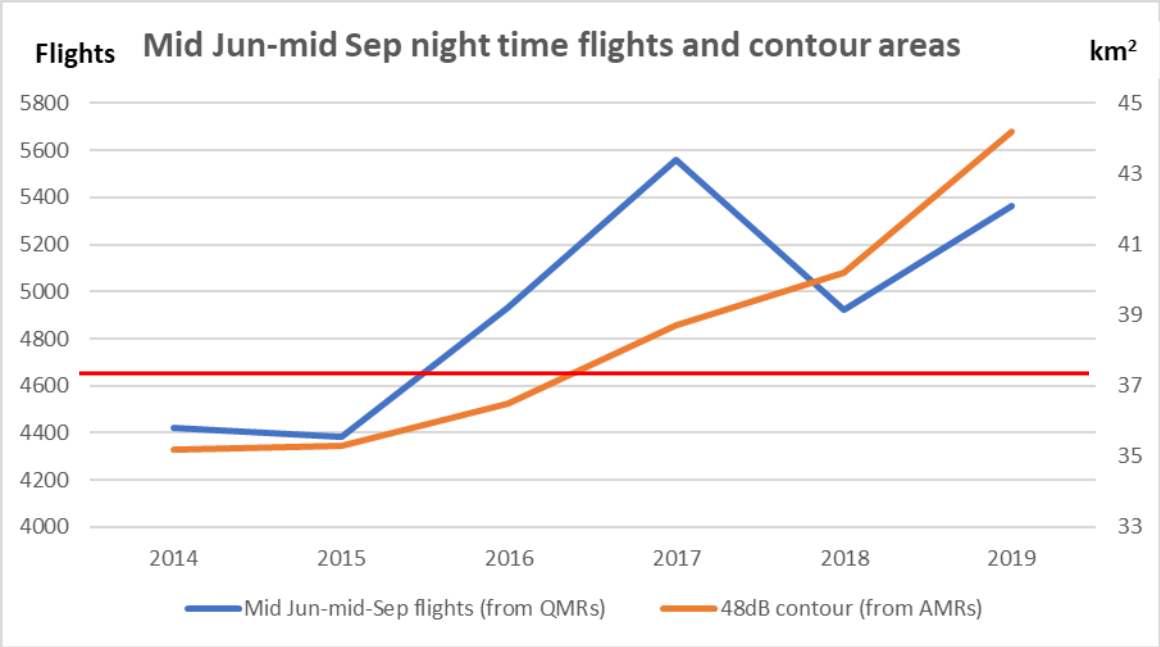


Chart 3: Left hand axis and blue line shows the numbers of night time flights (derived from QERs); right-hand axis and orange line the actual night time 48dB LAeq 8h noise contour areas (km²) given in the AMRs, 2014-2019. The red bar shows the night time noise contour limit (37.2 km²).

81. These charts give an indication of adverse trends which Applicant was committed to monitor (see paragraph 48 above), and the kind of observations which could have been made include:

- Daytime flight numbers grew rapidly in 2014 and 2015 and a foreseeable breach was obvious
- An apparent levelling off in daytime flight numbers occurred in 2017 and 2018
- Night time flight numbers grew rapidly in 2016 and 2017 but fell in 2018
- Numbers and contour area rose again in 2019, suggesting any control was short-lived
- Despite the fall in night flight numbers, the noise contour still rose suggesting noisier aircraft
- Numbers and contour area rose again in 2019, suggesting any control was short-lived

Note that in both cases the Applicant and BAP would have had the precise figures and the trend would have been clear.

82. During the period in which rapid growth of passenger throughput and flights led to breach of the noise contour condition, the LPA's attendance at the regular 3-monthly meetings of the LLACC and NTSC was interrupted, with apologies being tendered to LLACC meetings between July 2017

and April 2018 inclusive; and NTSC meetings between March 2016 and March 2017 inclusive[39]. This indicates a lack of focus on engagement with the operation of the Airport at a critical time when the accelerated growth in throughput was causing concern, as indicated by the questions by community representatives and responses from the Applicant recorded in NTSC minutes (copies of these NTSC minutes can be found by searching online "Luton Airport LLACC").

83. NTSC minutes March 2016:

"3.4 LLAOL stated that they were more concerned with the contour rather than the quota because they were growing much more quickly that had been initially planned. In the short term this might become a problem and the Airport had already restricted ad hoc traffic during the coming summer season."

84. NTSC minutes June 2016:

"2.6 The Chairman advised that there continued to be difficulties with engagement from LBC now they no longer had a dedicated Planning Officer for the airport. The Chairman confirmed that LBC have been contacted about future representation."

"3.9 The area within the 48 dB(A) noise contour had increased by around 23% compared to the same quarter last year. This was due to the increase in overall movements and the increased proportion of turbofan passenger aircraft, which are generally noisier than business jets and GA aircraft."

85. NTSC minutes December 2016:

"5.5 LLAOL informed that as part of the planning conditions they were required to submit planning contours for Summer 2016 and Summer 2017. It was felt that some condition limits might be reached earlier than previously thought."

86. NTSC minutes December 2017:

"LLAOL stated that at 'previous NTSC meetings we have actively talked about the possibility of coming up against, or even exceeding our noise contour limits, as per planning condition 12. The reason for this is due to <u>our accelerated passenger growth which has outstripped the arrival of the latest, quieter aircraft</u>.'" (our underlining)

This formal explanation to the NTSC in 2017 acknowledges accelerated passenger growth outstripping fleet modernisation as the cause of breach. It is clear that this accelerated growth was premature, since the timeframe for fleet modernisation was known to the Applicant and to its noise adviser BAP in 2012 only to be likely post-2017, as indicated here for example[40]:

[39] Search online for "Luton Airport LLACC" to find minutes of previous meetings of LLACC and NTSC
[40] CD13.45 'Noise Assessment Report', LLAOL, BAP report, Nov 2012

easyJet is making good progress on its technical and commercial evaluation of the next generation of short-haul aircraft technology. As the evaluation advances further, easyJet will bring a proposal to shareholders which will cover both the next generation of deliveries which are likely to be after 2017 and a plan for the bridging period from 2014 to 2017.

87. The trajectory of the accelerated growth in throughput and flights is shown in Chart 4 below, which compares actual data with the upper-end forecasts from the 2012 Application:

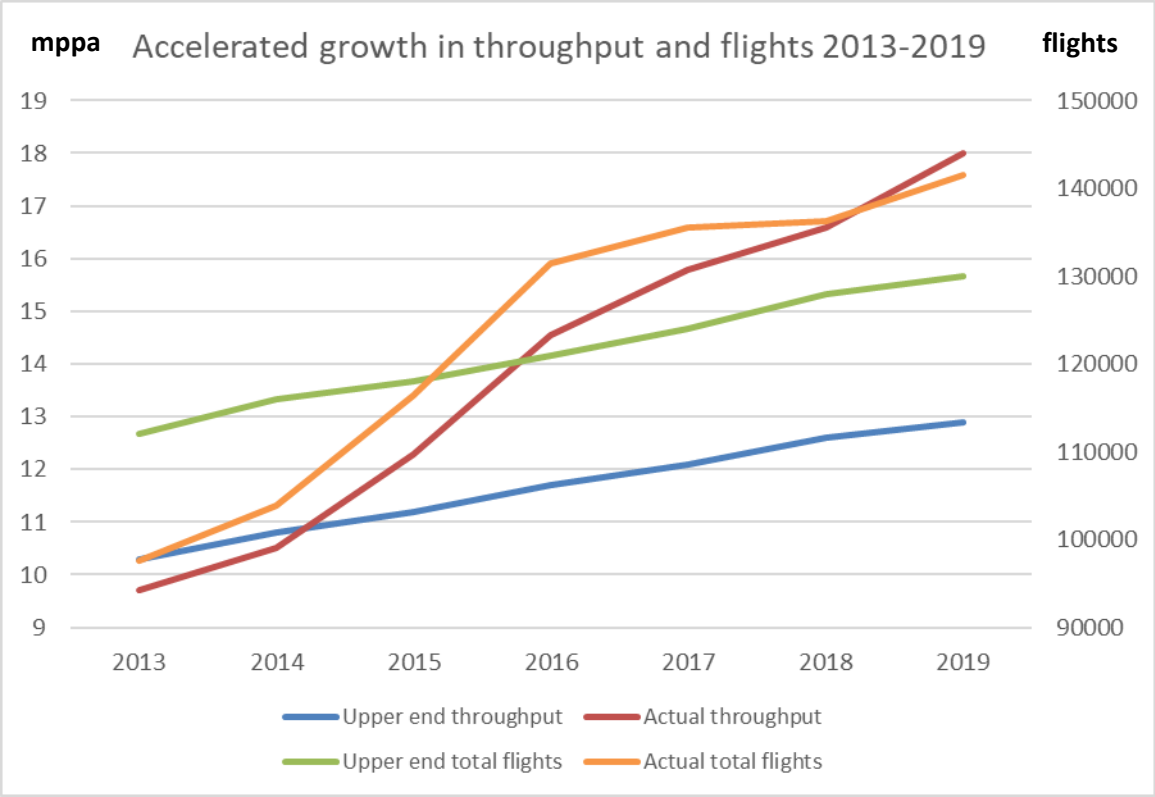


Chart 4: 2012 upper-end forecast throughput (Blue line) vs actual throughput (Red line) mppa; upper-end forecast annual flights (Green line) vs actual annual flights (Orange line). Source: LLA

The chart shows the unmistakable divergence of both "actual" lines from the forecasts on which the planning conditions agreed in December 2013 depended. I regard it is inconceivable that the Applicant as a professional airport operator would have been unaware of the implications. Note that the rate of climb of the Orange line (actual total flights) slows compared to the Red line (actual passengers) from 2017 due to the introduction of larger - and at the time noisier - aircraft.

10) Lack of consistency over timeframes and commitments

88. In this section I provide information which shows that:

- The timeframe portrayed by the Application for achieving 18mppa is misleading
- The Applicant appears to misunderstand how 92-day noise contour assessment works
- The Applicant is apparently confused between "demand-led" and "controlled" growth
- Planning commitments appear to be confused with aspirations

89. LLA press releases in July and August 2015[41] both contained the sentence *"LLA is investing £100 million into the airport to increase annual capacity from 12 million to 18 million by 2026"* which is broadly in line with the timeframe mentioned in the 2012 Application (see Section 3 above).

90. Nevertheless, in its table of responses to consultee queries, the current ES states *"Between 2013 and 2019 passenger numbers at LLA increased from 10.5mppa to 18mppa. This was in line with planning permissions (12/01400/FUL)."*[42]

91. Since "permissions" is in the plural, the second sentence cannot be regarded as correct. Whilst reaching 18mppa by 2019 looked at in isolation does not technically exceed the passenger cap, the growth trajectory which reached that passenger throughput by 2019 ahead of the required mitigation by fleet modernisation had exceeded the noise contour conditions, and exceedance of planning permission limits was confirmed in the Applicant's 2019 Annual Monitoring Report[43].

92. In its Planning Statement, the ES states *"Data from the noise monitoring that LLAOL carry out (and published as part of LLAOL's annual monitoring reports) revealed that the contours as set in Condition 10 were exceeded since 2017 but only in the summer."*

    This indicates a misunderstanding of the operation of noise contour conditions: the Applicant's Annual Monitoring Report 2019 referred to above confirms that the planning limit applies to the 92-day Summer period, as does the wording of condition 10, so the limit would by definition only ever be exceeded in the summer. Hence *"but only in the summer"* is meaningless.

93. The Environmental Impact Assessment states[44] with reference to the 2012 Application:

    "3.3.16 The original noise modelling only took into account the effects of modernisation with respect to the assessment in 2028, by which time it was assumed that the resident airlines would

[41] CD17.19 and CD17.18, 'LLA press releases', Jul and Aug 2015
[42] CD4.10 'Table providing clarification on issues', Wood, Aug 2020, page 20
[43] CD8.26 'Annual Monitoring Report 2019, LLA, page 35
[44] CD1.09 'Volume 2 Environmental Statement', Wood, Jan 2021

have acquired all of the ordered NEO and MAX aircraft. As such, little or no headroom was included for unforeseen circumstances outside of the control of the operator of LLA."

The Noise Assessment Report referenced by paragraph 86 does perform a fully comprehensive assessment of a number of scenarios including partial fleet modernisation. As for headroom, one way to allow for unforeseen circumstances is, as agreed by Luton Rising's Noise Envelope Design Group (NEDG)[45] to set a threshold sufficiently below the noise contour limit which when passed triggers corrective action:

"6.2.7 ... The validation exercise was recommended by the NEDG to provide a robust and transparent noise modelling methodology and is an approved practice."

"6.2.8 ... the noise contour outputs from AEDT would be used to define noise contour limits and thresholds and will supersede the existing contour limits based on INM."

94. The Environmental Impact Assessment for the Application also states[46]:

"1.3.1 … This adjustment [to the wording of Condition 10] *is required for the Airport to reflect what has been a slower than anticipated introduction by airlines of the next generation of quieter aircraft. The modernisation of fleets by airlines has not kept pace with the unexpectedly steep rise in passenger demand over the same period."* (our underlining)

95. A similar point is made elsewhere in the Environmental Impact Assessment[47]:
"8.6.2 As passenger demand returns to pre-Covid levels and increases to above higher than the Current Condition 8 limit of 18 mppa, it is predicted that the existing Condition 10 contours would be breached." (our underlining)

96. These statements indicate that the Applicant believes *"passenger demand"* justifies the need to vary the Conditions, implying that development of the Airport should be demand-driven.

97. Such an approach would appear to be at variance with the justification for planning conditions which limit the throughput of passengers and the sizes of noise contour areas respectively for Reasons clearly set out in 2014 under the headings "**Controls over operations**" and "**Noise**"[48]:
Original condition 10, the passenger throughput cap (renumbered 8 in 2015):
"Reason: To enable the Local Planning Authority to exercise proper control over the development, in the interests of securing a satisfactory operation of the development and to safeguard the

[45] CD8.32 'LR 32m Appendix 16.1 Noise', Luton Rising, Feb 2022
[46] CD1.16 'Volume 2: Environmental Statement Addendum', Wood, Jul 2022
[47] CD4.06 'ES – Chapter 8 Noise Revised', Wood, May 2021
[48] CD6.03 'Decision Notice for 18mppa', LPA, Jun 2014, PDF p5 and 8; and repeated in CD7.03 'Decision Notice for Variation', LPA, Oct 2017, PDF p4 and 5

amenities of the surrounding area. To accord with the objectives of Policy LP1 of the Luton Local Plan and the National Planning Policy Framework"

Original condition 12, the noise contour limits (renumbered 10 in 2015):

"Reason: To safeguard residential amenity. To accord with the objectives of Policy LP1 and LLA1 of the Luton Local Plan and the National Planning Policy Framework."

98. The Applicant also appears unclear on the difference between an aspiration and a commitment, since its statutory 2019 Noise Action Plan[49], drafted, reviewed and submitted when the Applicant was in breach of it noise contour limits, states on page 10:

"By 2021, LLA will develop a strategy to define methods to reduce the area of the noise contours by 2028 for daytime noise to 15.2sq km for the area exposed to 57dB(A) Leq16hr (0700-2300) and above and for night-time noise to 31.6 sq km for the area exposed to 48dB(A) Leq8hr (2300-0700) and above." (this strategy is still outstanding, as indicated in paragraphs 59 and 60)

and in section 3.4 on page 14:

"We will operate within our agreed contour area limits. 57dB(A) Leq16hr (0700- 2300) - 19.4 sq km. 48dB(A) Leq8hr (2300- 0700) - 37.2 sq km." (when in 2019 both limits were exceeded)

99. We can find no evidence of how the planning commitment to operate within the noise contour limit was ever treated as a commitment in practical terms which led to regulation of the growth trajectory so that the noise contour conditions applied in 2014 would be complied with. Instead, a draft report written by BAP[50] and circulated to the Applicant and to the LPA, provides detailed advice on a Transition Arrangement to move to application for extension of the noise contours above and beyond the conditions issued in 2014, as referred to in paragraph 53.

100. The Foreword to the Applicant's 2018 Annual Monitoring Report[51] provides a further example of what I regard as "corporate doublespeak", where aspiration and commitment appear to have been confused:

"We have a range of operating restrictions including movement limits and noise quota limits, and we are focussed on ensuring they are adhered to. We're also in the process of requesting temporary changes to our noise contour to ensure we remain fully compliant with existing regulations." (our underlining)

[49] CD13.11 'London Luton Airport Noise Action Plan 2019-2023', LLA,
[50] CD13.48 'A9501-R06D-DC Draft Transitional Arrangement', BAP, Jul 2017
[51] CD8.25 'LLA AMR 2018', LLA

11) Transparency and influence

101. In this section I provide information which shows that:

- No record was kept of pre-application meetings between the Applicant and the LPA
- LLAL has had a direct and relevant influence on matters of concern to the Inquiry

102. Having read the LPA's Enforcement Policy[52], and being aware of the significant time which has elapsed, I asked the LPA to provide minutes or emails of meetings relating to any discussion of enforcement against the breaches or the Application. The LPA declined to provide details, but did indicate the dates and times of a number of pe-application meetings attended by its Planning Officer (see Annex B) relating to this application and to its predecessor 19/00428/EIA. However, the response confirmed that there were no minutes of such meetings (see Annex B).

103. The LGA Guidance on probity in local planning[53] emphasises the importance of keeping notes of pre-application meetings and discussions to avoid any perception of bias or predetermination. In the section *"Meetings and discussions before a decision"* (p15 and 16) it states:
"The Localism Act, particularly Section 25, which establishes prior indications of view of a matter not to amount to predetermination, has given councillors much more freedom to engage in pre-application discussions. Nevertheless, in order to avoid the perception that councillors might have fettered their discretion, such discussions should take place within clear, published guidelines."

"Officers should arrange any meetings, attend these with councillors and make a written record of the meeting placing this note on the case file. A note should also be taken of any phone conversations, and relevant emails recorded for the file. Notes should record issues raised and advice given. If there is a legitimate reason for confidentiality regarding a proposal, a note of the nonconfidential issues raised or advice given can still normally be placed on the file to reassure others not party to the discussion." (our underlining)

104. In order to help the Inquiry to understand the justification for the LPA's decision to accept an application to vary conditions, rather than to enforce condition 10 in line with its Enforcement Policy[54], I requested sight of the relevant minutes, emails or file from the LPA, but nothing has been provided to date.

[52] See CD8.19 'Luton Borough Council Enforcement Policy', Dec 2015
[53] 'Probity in planning - Advice for councillors and officers making planning decisions', LGA, Dec 2019
[54] CD8.19 'LBC Enforcement Policy', undated, Luton Borough Council

105. Our difficulty in obtaining information from the LPA to assist the Inquiry appears to be at odds with the LGA Guidance cited in paragraph 103 above, which on page 6 states: *"Because planning decisions can be controversial, it is particularly important that the process is open and transparent."* and on page 7 confirms *"The seven principles of public life apply to anyone who works as a public office-holder. ... The overarching principles were first set out by Lord Nolan in 1995 in the Government's First Report on Standards in Public Life. They were reasserted and refined in subsequent reports of the Committee on Standards in Public Life, most recently the Local Government Ethical Standards Report published in 2019."*[55]

106. The LGA Guidance reiterates the Nolan principles, including: *"Openness: holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing."*

107. The 2019 CSPL paper referred to in the footnote to paragraph 105 contains a chapter 7 which emphasises a number of best practice measures regarding "Councils' Corporate Arrangements" which would provide a beneficial yardstick if the Inquiry considers that the closely interlocked relationship between the LPA and LLAL, and the influence of the LPA and LLAL on the rate of growth of throughput which breached the LPA's planning controls, is a matter of concern. We do have a number of concerns in this area, one being that during the material growth period the LPA and LLAL apparently shared one controlling mind[56].

108. We also have concerns over a 2018 Local Government Chronicle (LGC) article[57] attributed to the CEO of the LPA which confirms that a project for growth of the Airport *"significantly beyond its current permitted capacity"* had a timescale of *"2017-2021"* with *"six core staff"* working on the project, and the same Officer contact details as referenced in the preceding paragraph. The article sheds light on the nature of the interlock in statements such as: *"In that time **we** have delivered 50% growth, with 48 months of consecutive growth"* and "**We** have also submitted planning applications through our airport company for two development projects – New Century Park and Bartlett Square" (our emphasis): the "we" in both cases referring to projects for growth and the facilitation of growth of the Airport which hitherto the LPA has determined.

109. The financial prudence of such projects appears questionable: the LGC article goes on to say *"We have also invested £225m to deliver the state-of-the-art Luton DART fast transit system,*

[55] The Government Ethical Standards Report referred to by the Local Government Association Guidelines in a footnote is the 'Command Paper on Local Government Standards', published by the Committee for Standards in Public Life in December 2019

[56] CD8.22 'LBC-LLAL Officer Linked-In Page' retrieved from Linked In Feb 2020

[57] CD8.20 'LBC Officer LGC Article', Trevor Holden, Apr 2018

linking London Luton Airport with Luton Airport Parkway railway station." But in the 2021 LLAL financial statements, an impairment write-down of £185m has been applied to the DART by its ex-Auditors PriceWaterhouse Coopers, reducing its value as a capital asset from £262m to £77m.

110. The external auditors of the LPA, Ernst and Young, stated in their "Luton Borough Council Audit Results Report year ended 31 March 2018", published 8th January 2019, in a section headed "Value for Money risks", on page 43:

"What are our findings?

In considering our findings and recommendations, we have traced back all of the Council's decision making papers since 2012. We were concerned that there is no documented evidence that would have enabled the Councillors and members of the public to have understood and been able to scrutinise the overall decision made by the Council on Airport ownership, future borrowing and investment.

For example, the paper considered by Council's Executive in 2012 around the decision making to extend the concessionaire agreement did not refer to the evaluation of options undertaken in 2010 when there was the opportunity to break the agreement. In addition, we believe that none of the decision making papers, borrowing and treasury management documents since refer to the commitments the Council has in its concessionaire agreement and the significant termination payment should it chose to do something different. This is a significant and material reason that impacts on the timing of any evaluation of options."

111. The apparently prevailing attitude towards achieving balanced growth and mitigation versus achieving commercial benefit is summed up in the email from an LPA Councillor who was and still is an LLAL Director, to a LADACAN member concerned about aircraft noise[58] which said: *"In terms of the pace of growth, LLAL introduced a growth incentive scheme at London Luton Airport for commercial reasons because of the threat of competition from other airports in the London area".* The GIS agreement was signed within a month of planning agreement for the 2012 Application.

12) The effects of noise

112. The harmful effects on health, well-being and quality of life of aircraft noise, particularly at night, are documented in extensive literature some of which is cited in the Application and in

[58] CD8.13 'Eml LBC Cllr to LADACAN member', Cllr Andy Malcolm, May 2019

written representations. The first-hand effects are evidenced in the consolidated responses from members of the public opposed to this Application[59].

113. The predecessor to the Application, 19/00428/EIA (to vary Condition 10 to increase the noise contours) was withdrawn in January 2021 after three rounds of public consultation, during which it was overwhelmingly opposed with 534 public comments opposing and 2 supporting. Like the current application, that involved multiple revisions and updates over nearly 2 years. The Application has also been overwhelmingly opposed, with 923 public comments opposing and 205 supporting. Areas of concern shared by those opposed is expressed as a Word Cloud in Annex F.

114. Over the past 7 years I have had numerous meetings with local people in towns and villages affected by the noise flights to and from the Airport, and the ground noise, including places such as Breachwood Green, Caddington, Childwickbury, Flamstead, Gorhambury, Harpenden, Hitchin, Jersey Farm, Kings Walden, Markyate, Pepperstock, Preston, Redbourn, Sandridge, Slip End, South Luton, St Albans, St Paul's Walden, Wheathampstead and Wigmore. I have heard first-hand descriptions of the effects of this noise on their health and quality of life. Many people email me, some in despair, suffering depression or stress, some fearing for their mental health because of the relentless and significantly increased noise from flights which, during the busiest ever contour-breaching year of 2019 would, start before 06:00 and continue into the small hours.

115. Chart 5 (from the Applicant's 2019 Annual Monitoring Report referenced in paragraph 91) shows that during the busiest day, 24th May, every hour of the day and night had aircraft noise. There is never "Silent Night" near Luton Airport: a 24-hour operating licence permits its low-cost airlines to schedule the first wave of departures starting before 06:00, another at lunchtime and another at teatime, with the last wave of arrivals lingering on until the small hours, and cargo flights or departure slots scheduled at 02:00 adding to the noise disturbance. For some communities there is no respite at all. People living close to, or in line with, the runway will hear and may be overflown at low level either by arrivals or departures regardless of which way the wind is blowing, every day of the year: South Luton, Wigmore, Beachwood Green, Bendish, St Paul's Walden, West Stevenage being particularly affected.

[59] See CD3.01 which has replaced a consolidated PDF of unredacted public responses; see also CD3.05

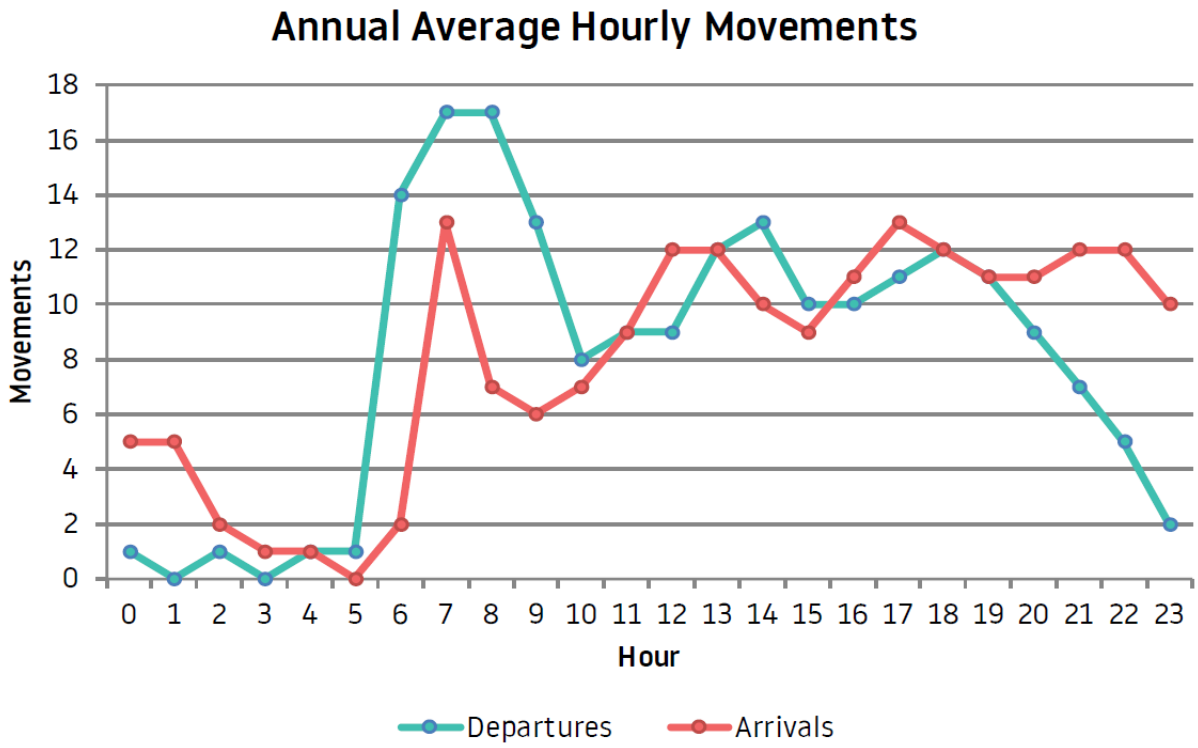


Chart 5: Average number of flights per hour during the busiest day in 2019 (source: LLA)

116. People living closest, within a defined contour band, are offered noise insulation as described in the Noise Insulation Scheme[60]. This involves keeping the windows closed and having a metal box on an inside wall to provide ventilation: not all those offered the scheme take it up[61] and by end of 2018 an acceptance rate of around 40% was reported and that Applicant undertook to arrange a survey to obtain feedback from those with units installed[62]. To my knowledge after enquiring of a member of the relevant committee, the survey has not yet been undertaken.

117. A review by the Independent Commission on Civil Aviation Noise (ICCAN) of noise insulation schemes identified a number of areas where best practice could beneficially be established[63]. One obvious problem with such insulation in that people cannot open windows when it is hot, or enjoy their balconies, without losing the benefit of noise reduction. The LPA's Planning Officer has indicated that the noise insulation proposed by the Application is regarded as a form of compensation because not all eligible properties will be insulated when adverse noise impacts are experienced[64]. As far as I can ascertain, no non-residential noise insulation has yet been installed since the affected properties are expected to approach the Applicant for insulation.

[60] CD8.28 'LLA Noise Insulation Scheme', LLA,
[61] CD8.46 'LLACC NIS sub-committee meeting (redacted)', LLACC, Nov 2017
[62] CD13.31 'LLACC NIS committee meeting Version 1', LLACC, Nov 2018
[63] CD8.17 'ICCAN Noise Insulation Review', ICCAN, Mar 2021
[64] CD5.08 'DMC Item 7 London Luton Airport', LPA, Nov 2021 See paragraphs 129 and 141 (iv)

118. The effects of noise over the period from 2014 were increased due to evolution of the fleet whereby the proportion of smaller, comparatively less noisy aircraft such as the Airbus A319 reduced, and the proportion of larger, comparatively more noisy aircraft such as the Airbus A320 and Airbus A321 increased – while at the same time (as shown in paragraph 87, Chart 4) total numbers of flights were also increasing. The evolution of the fleet over the five years to 2019 is shown in Chart 6 below, reproduced from the Applicant's 2019 Annual Monitoring Report[65]:

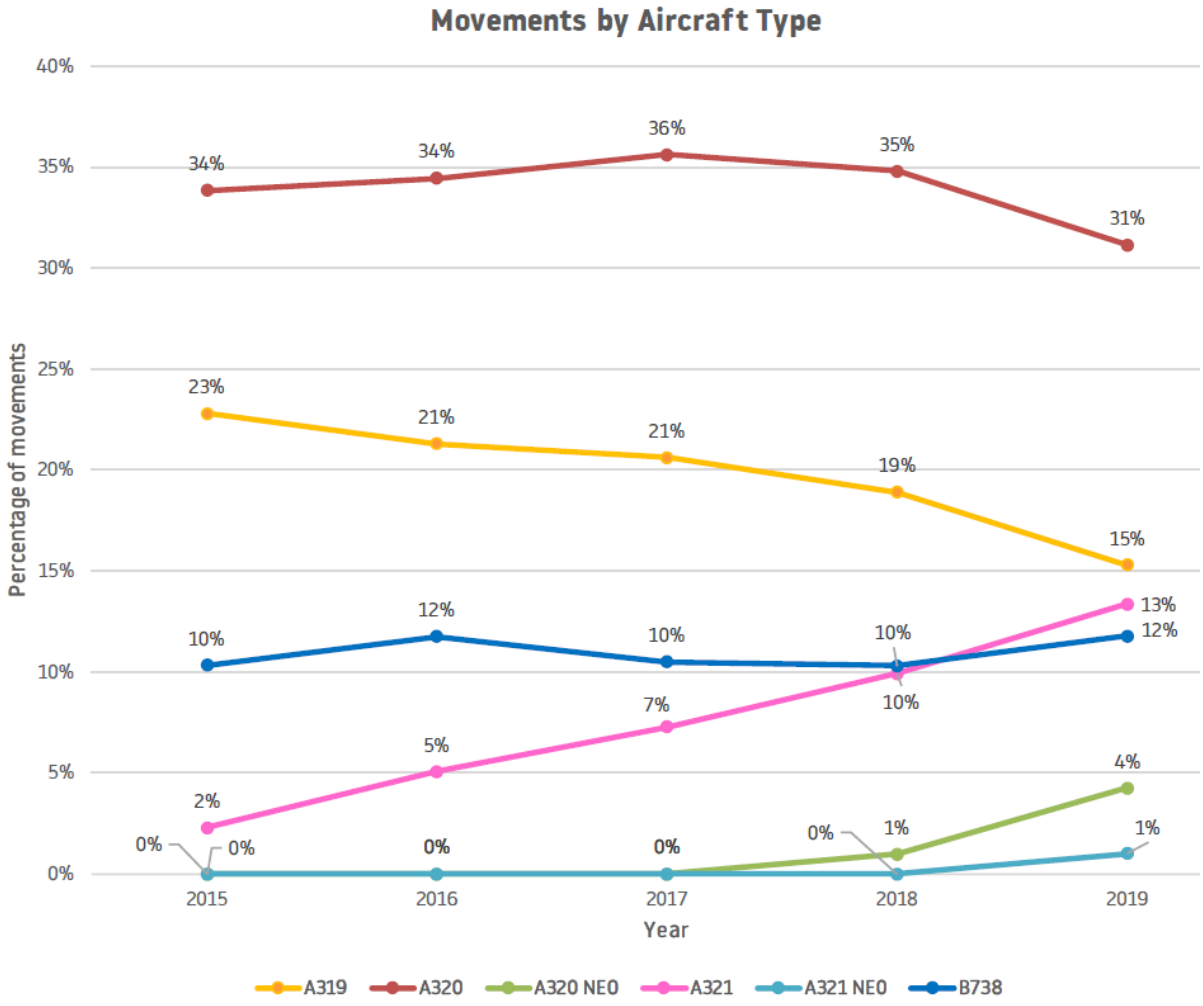


Chart 6: percentage of main aircraft type in the Luton Airport fleet mix, 2015-2019 (Source: LLA)

119. The slides shown by the LPA's noise adviser at the second Planning Meeting to determine the Application confirm that the past impacts of this non-permitted development compared to the original noise contour condition limits have been greater than at present and are projected (on the basis of the Applicant's forecasts) to diminish over time[66].

[65] CD8.26 'LLA AMR 2019', LLA, page 11
[66] CD5.09 'DMC Amendment Sheet', LPA, Nov 2021, see PDF pages 24 and 25

120. The Application is retrospective, and was not made reasonably promptly after the Applicant knew in 2016 of the likelihood of breach and had received in 2017 the Transition Arrangement report referred to in paragraph 53. There was a further 2½ year delay in producing an application which could be determined (including the withdrawn predecessor application 19/00428/EIA). As a result of this and other delays, the Applicant has benefited by being able to present a delayed ES which does not quantify the greater past harms relative to the "without development" case. Put more simply: provided the forecasts of future diminution in the noise impacts can be relied upon, the relative scale of harm in future years appears to be reduced compared to the relative scale of past harms, enabling the Applicant to claim that the noise effects are "not significant".[67] This does seem to accord with the broad policy principle of fairly sharing the benefits of aviation expansion: in this tactical scenario the community has suffered and the industry has benefited.

121. Common-sense logic indicates that an alternative view could be taken along these lines:

- Exposure to aviation noise is known to cause harm (for example increased risk of stroke)
- Since the increased risks arise from physiological damage, they may not diminish over time
- Hence past exposure to more than permitted noise could cause a present increased risk

I therefore suggest that in this particular case it would be reasonable to consider the past harms caused by the non-permitted development and the delay in resolution or enforcement, as well as the predicted future harms, when weighing in the balance the impacts of the Application with regard to the effects of noise.

13) The Noise Control Scheme

122. In this section I provide information which shows that:

- Condition 9 requires the Applicant to adhere to the Noise Control Scheme
- The Applicant published its Noise Control Scheme in 2015, including noise contour limits
- The Application does not seek to vary Condition 9, therefore those limits still stand

123. The 2015 Decision Sheet[68] following the 2015 variation restates Condition 9 with the preface: *"The development shall be operated in accordance with the Noise Control Scheme approved on 2 March 2015 (ref: 14/01519/DOC). For the avoidance of doubt the controls within that scheme*

[67] CD1.18 'Addendum to CD1.08 Environmental Statement Non Technical Summary', Wood, Jul 2022, page 15
[68] CD7.03 '2015 Decision Notice for Variation', LBC, Oct 2017

include:"

and then goes on to list various noise controls.

124. In 2015 the Applicant published its Noise Control Scheme[69], which in the preface states:

"In order to honour our commitments to minimise noise we have developed a full suite of control measures, which together form our Noise Control Scheme. This includes measures that respond to the planning conditions associated with our planning permission, a number of voluntary measures agreed in consultation with LLACC and some that follow best industry practice. The Noise Control Scheme has been approved by Luton Borough Council and is subject to periodic review."

125. The Applicant's Noise Control Scheme then goes on to include the noise contour controls and specifies their existing limits, stating:

"To manage residential amenity, the area within which the average noise level can exceed 57dBA is limited to 19.4 sq. km. during the daytime period. The area for which noise can exceed 48dB i.e. within the 48dB contour at night is restricted to 37.2 sq. km. Average noise levels are not permitted to exceed these levels outside of these areas. Our ongoing aim is to encourage the use of quieter aircraft. To achieve this we intend to reduce the 57dB average daytime noise contour area to 15.2 sq. km. and the night-time noise to 31.6 sq. km. for the area exposed to 48dB and above by 2028."

126. The Application does not seek to vary Condition 9, and has not evidenced a variation to the Noise Control Scheme being agreed by proper periodic review, therefore it is reasonable to assume that the existing noise contour limits still stand, regardless of the Application.

14) Noise monitoring equipment

127. In this section I provide information which shows that:

- The Applicant is required to maintain and validate noise and track monitoring equipment
- The Applicant disclosed its noise measurements to us, which contain significant errors
- Key recalibration of the noise contour model did not apparently follow best practice

128. Section 4.2 "Elements of Luton's Future Overall Noise Management Pursuant to Condition 13 (now numbered 11)" of the Noise Report referenced in paragraph 40 above identifies key responsibilities of the Applicant, underlined below:

[69] CD8.45 'Noise Control Scheme London Luton Airport', LLA, Aug 2015

"Fixed Noise Monitoring

The Airport will continue to maintain, calibrate, and operate the current Aircraft Noise and Track Monitoring System or one updated. LLAOL will continue to carry out noise monitoring at the following locations: (i) Pepsal End Farm, Pepsal End, Bedfordshire; (ii) Grove Farm, Slip End, Bedfordshire; (iii) Frogmore Bottom, Hertfordshire. Or if these locations become unavailable or not appropriate alternative locations agreed with the local planning authority (Luton Borough Council).

Noise levels of departing aircraft passing in the vicinity of the noise monitors will be recorded and the results analysed, to establish the departure noise level in relation to the aircraft registration. Using the registration the noise certification values for the aircraft will be obtained via the operator. This information will allow the QC value of the aircraft to be determined. ACL will use this information to implement any restrictions on aircraft slots given at the airport."

The 2015 Planning Decision Notice[70] adds further requirements in its restated Condition 11:

"For the avoidance of doubt the controls include:

i) Fixed noise monitoring terminals and track keeping system (vertical and horizontal)

iv) Arrangements for the verification of the submitted information"

Maintenance, calibration, verification, recording noise levels at appropriate locations, analysis, and recording registration values[71] are all included in the above obligations.

129. After summarising my understanding of the noise and track-keeping (NTK) system at the Airport, I will evidence my concerns over the discharge of each of the above obligations. It is clear from the BAP reports that calibration and regular validation noise contour model depends on the data provided by the Applicant from the equipment which the Applicant is responsible for. If the noise contour model is not adjusted consistently over time using verified and comparable data then the accuracy of modelling of the noise contours will be affected, and likewise the noise impact assessment within the ES.

130. Informed by attendance at the NTSC and discussions with the Applicant's noise team when for example I have hosted their portable noise monitoring systems, my understanding of the systems and information flows involved in the Airport's Noise and Track Keeping (NTK) system and the noise modelling and noise contour production can be briefly summarised as follows:

[70] CD7.03 '2015 Decision Notice for Variation', LPA, Oct 2017

[71] An aircraft's registration code is unique to that airframe, from which the aircraft type and type of engines can be found, as well as the noise certification values used for the Quota Count controls pursuant to Condition 11.

NTK system:

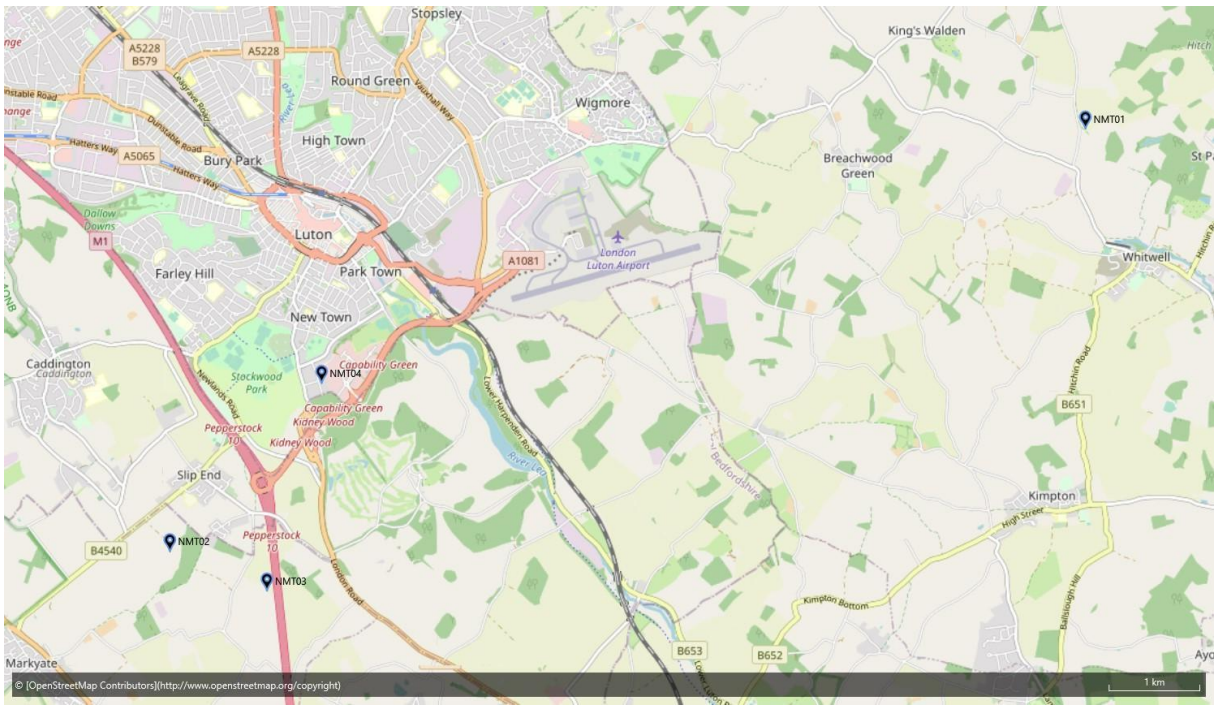
- The NTK system integrates radar data, flight schedule data and raw noise data
- Radar data provides timed position and altitude points of identified aircraft in flight
- The flight schedule data includes airline, flight, date/time, origin/destination, aircraft
- Fixed and mobile noise monitoring terminals (NMTs) are deployed by the Applicant
- The noise monitors transmit once-a-second noise level readings to the NTK system
- The noise monitors can also transmit self-calibration check readings to the NTK system
- The NTK system performs correlation between monitor noise data with flight radar data
- Correlations identified by the NTK are stored and can be exported as spreadsheets

Noise model and noise contour production:

- Correlated noise measurements data and aircraft movements data is sent to BAP
- The noise and movements data sent to or used by BAP may be actual or forecast values
- BAP maintains the noise contour model which produces actual and forecast contour data
- The location and area of the noise contours indicate households exposed to given noise

Noise monitor identifiers and locations:

The Applicant has disclosed the following graphic indicating the fixed noise monitor locations NMT01, NMT02, NMT03 and the mobile monitor NMT04 used for the monitoring in South Luton:



131. It is clear that all of these systems and processes are relied on in the production of the contour information presented in the Application, aspects of which are described in associated BAP reports included in the Core Library[72].

132. I now set out information relating to the obligations identified in paragraph 128, indicating my concerns over areas where the obligations are apparently not being met.

Maintenance

133. Based on observations of Travis and information discussed with the Applicant at NTSC meetings, there have been periods of more than 2-3 days when not all fixed monitors were functioning – for example fixed monitor NMT03 was out of service for much of April to August 2016; fixed monitor NMT02 was out of service for much of October and November 2016; fixed monitor NMT03 was out of service during November 2019. BAP reports state *"NMT2 and NMT3 given half-weighting"* and *"the results from NMT 3, due to its proximity to the motorway, are likely to overstate the aircraft noise*." Depending on the size of the disparity, removing one and not the other of this pair of monitors would be likely to affect noise measurement analysis covering those periods, but this is not considered in the noise contour model adjustment reports.

Calibration

134. The professional fixed noise monitors used for NMT01, NMT02 and NM03 are known to be able to send daily calibration reports to the Applicant's NTK system. I requested calibration reports for these monitors from the Applicant for the period 2018-2019, which were provided. As the charts in Annex E show, which reproduce pages from those reports, NMT03 was out of calibration limits for significant periods during those years. This would affect the validity of noise measurements which were used by BAP to adjust the noise contour model in those years. Their reports[73] do not mention this issue, so it is probable they were not advised of it and could inadvertently have used out-of-calibration noise measurements in the adjustment of the noise contour model.

Verification

135. The raw data for the 2014/15 South Luton monitoring has been disclosed by the Applicant[74] along with the details of the pre-processing filtering of invalid entries performed by BAP before using it for calibration of the noise contour model. The A320ceo arrival and departure noise data

[72] See for example CD13.14 'Validation of INM prediction', BAP, 2012; CD13.15 '2017 Summer Contours', BAP, Nov 2017; CD13.17 'Contouring methodology update', BAP, Aug 2018; CD13.23 'Processing of NMT results', BAP, Jul 2022

[73] CD13.17 '2018 contouring methodology update', BAP, Nov 2018 and CD13.16 '2019 contouring methodology update', BAP, Nov 2019

[74] CD8.49 'Raw noise data', as provided by the Applicant to BAP for noise contour model validation, 2014-2019

from 2014-2017 was also disclosed, as were the noise measurements from 2018 and 2019. In all cases, I requested the raw noise data which had been sent to BAP, so as to minimise effort on the part of the Applicant because this would already be available in an exported form from the NTK.

136. I reviewed the noise measurement data which the Applicant has disclosed using the data filtering methodology which BAP disclosed, and performed some basic verification checks. As BAP acknowledges, the measurements contain numerous duplicate entries (same date, time, airline, flight, runway, origin/destination). Some have different noise information and different times at which the noise measurement was correlated with the track of the corresponding flight, and different noise peak durations. Some of the peak times of duplicate measurements varied by a few seconds, others by 8-10 minutes or more. I surmised that the former are due to erroneous identification of the noise peak, the latter due to go-arounds (arrivals which for technical reasons do not land first time so climb away and "go around" the airfield to re-join the arrivals queue and complete a landing).

If a flight "goes around" once, it generates around four times as much local low-level noise as it would have done had it landed first time: (1) initial arrival; (2) climb away again as a departure; (3) transit an unusual route at low altitude back to the arrival queue; and (4) final landing. The statistics on go-arounds are not published, but this fourfold noise impact may justify inclusion of go-around operations in the noise contour model, as part of the BAP calibration.

Recording noise levels at appropriate locations

137. The BAP noise contouring report for 2018 referred to in paragraph 134 describes adjustment of the modelled noise values for different aircraft types based on the noise measurements (in the disclosed raw data) from the fixed monitors. It caveats the exercise by noting *"In this it is taken into account that the results from NMT 3, due to its proximity to the motorway, are likely to overstate the aircraft noise."*

It is unclear how this is taken into account, or what the quantity of any adjustment might be. I assessed the difference in values between NMT02 (rural farming location) and NMT03 (adjacent to the M1) for the roughly 27,000 Airbus and Boeing flight departures which registered at both those monitors during 2018 (after having corrected the types where they were in error according to the registration code – see below), and found overall arithmetic average difference to be less than 1dB SEL overall, but that it varied between aircraft types. For the most numerous (A320ceo) type, the difference was 0.6dB SEL from 12,000 readings. But in any case, it remains unclear why the Applicant still relies on NMT03 when in 2017 the NTSC minuted a recommendation to re-site a monitor more centrally beneath the most frequently used departure route:

"7) LLAOL progresses the installation of a noise monitor between NMT02 and NMT03 and provides a report correlating the noise data from each monitor with the lateral position of corresponding flights (once the radar-derived position data is known to be accurate) for NTSC to assess."[75]

This recommendation was not actioned, and NMT03 remains in a noise-polluted location as BAP has highlighted and as can be seen from the graphic in paragraph 130.

Analysis

138. The noise contour model relies on the calibration data used to adjust the performance of aircraft as accurately as possible to confirmatory measured values[76]. Here, in analysing the data, I noted a number of areas where more sophisticated analysis would benefit the modelling. One significant example is given here:

2015 contour model recalibration exercise

For three winter weeks between 23 Dec 2014 and 14 Jan 2015 a mobile noise monitor in Ludlow Avenue, South Luton, was used to recalibrate the departure profiles of the main aircraft types[77]. After applying the BAP filters and removing duplicates, the South Luton data appears to contain the following numbers of noise measurements by aircraft type and runway for the main airlines:

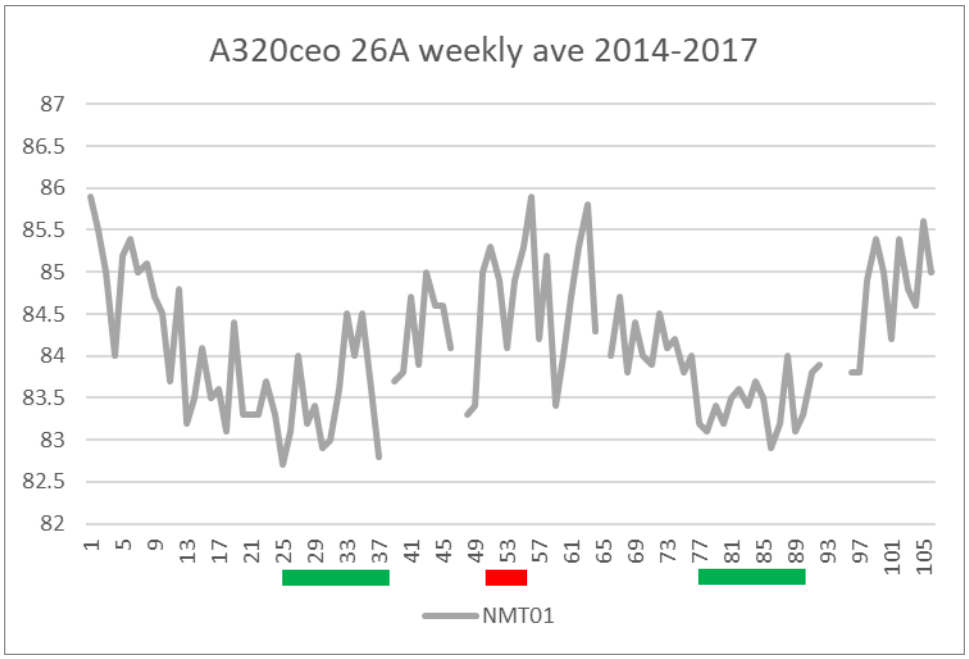
2015 monitoring data	**easyJet**	**Wizz Air**	**RyanAir**
Airbus A319	08 Arrival: 65 26 Depart: 521		
Airbus A320	08 Arrival: 20 26 Depart: 161	08 Arrival: 43 26 Depart: 464	
Boeing 737-800			08 Arrival: 10 26 Depart: 126

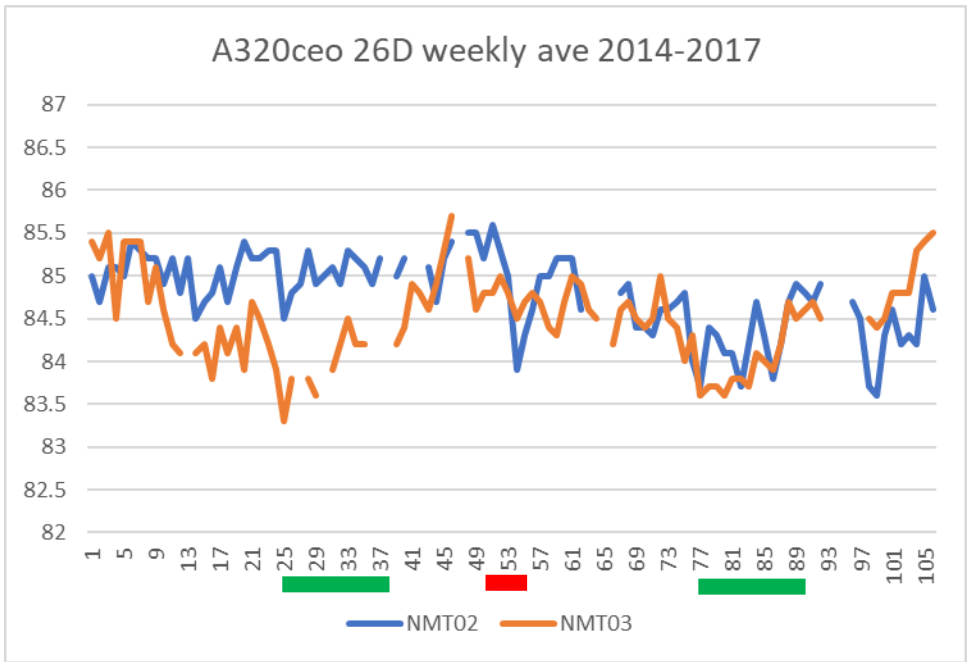
Compared to the *"many thousands"* of samples normally used to underpin contour modelling[78], the 2015 sample sizes would seem unrepresentatively low and hence prone to sampling error. Yet based on these results and "discussions with airlines" about their departure profiles, BAP recalibrated the noise contour model, resulting in a marked reduction in contour areas. I asked

[75] LLA NTSC minutes, June 2017, available from LLACC website by searching online "Luton Airport LLACC"
[76] Apart from the narrative in the BAP reports, CD8.21 'LBC Response to Andrew Lambourne', LPA and BAP, May 2020, shows how much difference the adjustment of a noise reduction parameter can have to the area of the noise contours, which may not be easily perceived by the naked eye.
[77] CD8.06 'BAP contouring methodology update', BAP, Aug 2015
[78] CD13.21 'Noise contour assessment', BAP, Jul 2019, p4

for further information about the departure profiles, but was advised by the Applicant that these are confidential. I asked for details of any other South Luton monitoring used to calibrate the model but none were provided, and subsequent BAP contouring reports in 2018 and 2019 refer only to this South Luton monitoring.

139. The charts below show the weekly arithmetic average SEL noise measurements (using the disclosed data) for A320ceo arrivals and departures using Runway 26 at the Airport between January 2014 and December 2015, where sample sizes of 50 or more are available:





The 92-day summer periods are represented by the green bars; the period of South Luton monitoring is represented by the red bar.

I know that the statutory 92-day summer noise contours are not calculated directly from noise measurements, but the calibration of the model was adjusted using the South Luton monitoring. These charts indicate that the South Luton monitoring was inadequate to be representative of the variation in noisiness of flights which occurs over time due to weather and loading factors.

Recording the registration values

140. I reviewed the noise measurement data which the Applicant has disclosed[79] using same the data filtering methodology which BAP has disclosed, and performed some basic verification checks. Given the key tie-in between the airframe registration code and the aircraft type / engine type mentioned in paragraph 128 above, this would appear an obvious verification test since the data contains both values for each flight.

I created a checklist of registration codes of the modernised aircraft types (A320neo, A321neo) in the fleets of the main airlines using the Airport during 2018 and 2019 which are the years in which BAP indicates it calibrated the noise data for the A320 and A321 types. Comparing the disclosed data to the checklist showed a significant number of errors in which the registration code did not match the expected aircraft type in 2018.

Breaking these down by month showed a spike in the September (over 1300 errors) and October (over 1200 errors). In responses to a query, the Applicant's agent advised that BAP had not made changes to data parameters, suggesting again that they had not been notified of the issue. If this is the case, the contour model calibration in 2018 would have been affected, and possibly also the numbers of movements in the 92-day contouring calculation since the errors affected mostly aircraft being designated erroneously as modernised neo types when they were in fact ceo types. It would be appropriate for this contour calibration exercise to be revisited with corrected data – but see also the comments above regarding calibration.

15) Conclusions

141. The Airport is owned by the LPA through LLAL in response to the Airports Act 1986, which provides two options for managing an airport owned by a local planning authority. The second option is for the airport to be managed by a third-party company whose directors are qualified for the role. In the case of Luton, the Applicant is the airport operator.

142. In 2012 the operating concession agreement was extended by three years to 2031 in return for the Applicant investing to develop the site based on a plan from LLAL, and applying for a

[79] CD8.49 'Raw noise data', as provided by the Applicant to BAP for noise contour model validation, 2014-2019

more significant capacity expansion by 2028 than it had itself proposed. That application (12/01400/FUL) was consulted on and agreed by the LPA, subject to obligations and conditions, at the end of 2013. The documentation indicates that LLAL negotiated hard to achieve future development in line with its own plans and strategy for the Airport.

143. The 2014 planning obligations and conditions were clearly designed to ensure mitigation and control of noise in balance with the significant expansion of throughput and flights during a 15-year growth period. A gradual modernisation of the aircraft fleet by the introduction less noisy aircraft types was projected to provide balancing noise mitigation. This balance was tuned to ensure that the "noise contour footprint" of the Airport would remain, as the Local Plan required, below the actual level established for 1999 and carried forwards by agreement into the new conditions.

144. I observe that the significance of the environmental impacts appeared to be matched by a set of planning controls designed to ensure conformance with the Local Plan and national policy, and to protect residential amenity. This depended on expansion over a timeframe sufficient to allow for noise mitigation by fleet modernisation to take place.

145. I observe that noise contours are a valuable mechanism to secure noise mitigation, since they take account of the number of flights and the actual individual noisiness of the types of aircraft as operated at the airport in question.

146. I observe that a passenger cap is also a mechanism for noise control, since it limits the number of seats occupied by commercial passengers, and hence (according to the fleet mix) the number of flights over the defined period.

147. The S106 Agreement governing the 2014 permission requires reporting of the noise impacts and trends in environmental impact indicators, and I observed that such reporting was regularly provided by the Applicant to the LPA during the period since 2014. I conclude that the Director of Planning of the LPA has an obligation to monitor the Applicant's performance against the S106 Agreement. That Agreement also includes a commitment that the Applicant will identify and seek to avoid adverse noise trends.

148. To my knowledge the Applicant can limit the rate of release of flight slots via its twice-yearly capacity declarations, and its noise adviser is able to forward-model (based on forecast or confirmed schedules) consequential noise contours, and to calibrate and adjust the modelling based on its interpretation of noise measurements exported from the Applicant's NTK system.

149. Ultimately, if an adverse noise trend cannot be resolved by any other means, the ICAO 4-point plan indicates that operating restrictions (ie flying less aircraft) are appropriate. I conclude

from all the above that the 2014 permission incorporated sufficient obligations and conditions for balancing, reporting, monitoring, forecasting and controlling the rate of growth of throughput that the rate of growth of noise impacts should have remained within limits.

150. In 2016 an adverse trend was identified: BAP forecast a breach of night noise contours the following year. I suggest that the Applicant's proposed Action Plan could have been tested by modelling: on the face of it the measures appeared insufficient to resolve the problem, and since the breach did occur and continued to occur, I conclude that no effective corrective action was taken. Noting the LPA scrutiny backstop role as well as the controls, I simply cannot accept that a professional airport operator can plausibly claim that breaches of this magnitude and extent, worsening over time, were "unexpected". I concur that they were due to mismanagement.

151. The LPA urged the Applicant to bring noise back under control, but a retrospective planning application was submitted in 2019 to increase the noise contour limits and only to bring them back into line by the strategic long-term reduction date of 2028. After multiple consultations, that application was substituted by the current Application to extend long-term reduction by three years and also seek additional passenger capacity. Noting that the process to date since the first breach was confirmed has taken five years, three of which saw communities exposed to non-permitted levels of noise, I conclude that residential amenity has not been protected.

152. As a member of the NTSC, as a local resident and as a community representative I have long sought to understand how and why the apparently robust system of balances, reporting, scrutiny and controls attached to the 2014 permission apparently failed so soon after permission was granted. I have learned that a Growth Incentive Scheme was signed between the LPA, the Applicant and LLAL in January 2014, one month after the LPA agreed the 2012 Application. I also learned that the LPA, the Applicant and LLAL agreed to annual Baseline Review meetings where passenger thresholds and incentive amounts for the GIS incentivisation would be set. I noted the year-long absence from the LLACC and NTSC of the LPA during the rapid growth period.

153. I also learned that the LPA's Executive Committee and its Overview and Scrutiny Board regularly reviewed airport passenger performance against targets which were significantly higher than those projected in the 2012 Application. Knowing from the Applicant's reports that the rate of mitigation was not significantly ahead of schedule, I can only conclude there were two quite different throughput growth trajectories – one declared during consultation and determination of the 2012 Application, the other separately agreed between the LPA, the Applicant and LLAL.

154. This could explain why no effective control was applied to prevent worsening breaches of condition, and why no information about discussions concerning enforcement were disclosed.

Neither were notes kept of pre-application meetings, which appears not to conform with best-practice LGA Guidance.

155. The timeframe portrayed by the Application for achieving 18mppa is as misleading as the stance of the Applicant regarding its commitments to abide by conditions. There appears to be obfuscation designed to give the impression that the over-rapid growth was "unexpected", when the evidence indicates it was discussed, known and driven against a targeted plan involving the main parties – but not, to my knowledge, disclosed to community representatives who attend the LLACC and NTSC. I am forced to conclude that if correct, this is an unacceptable state of affairs which would inspire no confidence in the integrity of the parties involved.

156. A more rapid growth agenda would explain the apparent "demand-led" approach rather than the expected controlled growth – and I have to conclude that the rate of targeted growth had no regard for planning restraints. The extent to which the Application and its predecessor have been modified suggests that a lack of transparency may not be accidental. The lack of clarity over the baseline "Do Nothing" case which we highlighted in our consultation responses persists.

157. Errors I have identified in the noise measurement data, equipment failures and lack of consistent calibration of the noise monitors, and a key noise model adjustment based on what appear to be unrepresentative samples, all cast doubts on the assessment of noise impacts. If the noise model is inaccurate then the impacts cannot reliably be evaluated.

158. The Noise Control Scheme appears to have been interpreted differently by the Applicant and the LPA, which may mean that Condition 9 still applies in any case and the existing noise contour limits still stand.

159. From all the above I conclude, based on the track record of the Applicant, the LPA and LLAL, that communities would be justified in having no confidence that the main parties were genuinely committed to ensuring balanced growth and mitigation following the 2014 permission. Instead, I conclude that the accelerated growth was commercially driven, noise and other environmental impacts were not controlled and, without a noise reduction strategy in place, may not reduce over the longer term to the extent suggested by the Application.

160. I conclude that this is an obvious and serious case of unresolved conflict of interest which can only be remedied by the involvement of independent third parties committed to ensuring that the interests of people whose health and quality of life have been and will be negatively affected by the environmental impacts of Luton Airport, are properly and adequately protected.

Annex A: Letter from Luton Rising officer

Our airport.
Our community.
Our planet.

Luton Rising
Hart House Business Centre
Kimpton Road
Luton
LU2 0LA

lutonrising.org.uk
01582 522 300

8 August 2022

Mr Andrew Lambourne
LADACAN
[redacted]

By email

Dear Andrew

Thank you for your letter of 28 July 2022. I am responding to you in my role as Executive Director, Governance for Luton Rising as that is the organisation holding the information you have requested.

The following are the answers to your questions:

Question 1: You are, indeed, correct; apologies for any confusion.

Question 2: The annual target is in fact a forecast of passenger numbers prepared by the airport operator. At the time the report was written, the figures we were working with were:

2013-14	9.741m (actual)
2014-15	10.786m (actual)
2015-16	12.839m (actual)
2016-17	15.052m (actual)
2017-18	16.123m
2018-19	16.311m
2019-20	17.088m
2020-21	18m
2021-22	18m

Question 3: Quarterly targets are set by multiplying the forecast annual passenger number by the percentage of total passengers who used the airport in that particular quarter in the previous year. This reflects seasonal fluctuation and for the year in question the percentage for the April to June quarter was 26%

Question 4: The annual rebates on concession fee were as follows:

2013-14	.304m
2014-15	1.536m
2015-16	2.909m
2016-17	3.350m
2017-18	2.303m
2018-19	3.131m
2019-20	1.871m

Question 5: a separate response will be provided by Luton Council's Deputy Monitoring Officer.

Question 6: at the time the Growth Incentive Scheme was entered into, there was no expectation that the passenger cap or noise limits would be exceeded. The following are the forecast passenger numbers that were modelled at that time:

2013-14	9.738m
2014-15	10.601m
2015-16	11.602m
2016-17	13.180m
2017-18	14.007m
2018-19	14.176m
2019-20	14.368m

I hope that this answers your questions.

Yours sincerely,

[redacted]

Mark Turner,
Executive Director, Governance
Luton Rising

Annex B: Response to Freedom of Information Request regarding enforcement

Business Intelligence
Luton Council
Town Hall
Luton
LU1 2BQ

T: 01582 546398
E: FOI@luton.gov.uk
W: www.luton.gov.uk

Sent via email to:
info@ladacan.org

27 January 2022

Reference FOI/EIR REQ C71288 AL

Dear Mr Lambourne

Re: Your Environmental Information Regulations request

I write in response to your Environmental Information Regulations (EIR) request dated 15 July 2021 and apologise for the delay in providing you with a response.

Your Request

You requested that Mr Gurtler provide you with "a copy of the minutes of any meetings held between LBC and LLAOL in terms of the breach of noise contour planning control, possible enforcement and the proposed planning application."

We have considered your request under the Environmental Information Regulations 2004.

Response
I can confirm that we do not hold information within the scope of your request.

Regulation 12(4)(a) states that we must issue a formal refusal notice when this is the case.

In order to find any relevant minutes, My Gurtler has searched his calendar for dates of meetings between the Council and the airport operator in relation to this matter. This search has gone back to December 2016, the point at which, in compliance with the requirements of condition 10 of planning permission ref: 15/00950/VARCON (formerly condition 12 of planning permission 12/01400/FUL), LLAOL first alerted the Council that the 48dB LAeq(8hr) night noise contour might be exceeded over the summer period of 2017.

Luton

Having then established times and dates when these meetings took place, Mr Gurtler has then checked to see whether there were any hard copies or electronic minutes of the meetings and can confirm that there are none.

In terms of the meetings that took place, I am able to advise you that Mr Gurtler's calendar shows that there were nineteen meetings (many of which were MSTeams meetings due to the pandemic) with LLAOL in relation to the noise contours, the proposed variation to condition 10 (leading to the first planning application) and also meetings post submission and leading up to the second Section 73 application to vary the passenger cap as well as the noise cap.

The list of meetings is provided below, but for context I have also put in some key dates relating to events associated with the two Section 73 applications.

i. Meeting 2017.2.16 @ 14.30 Luton Airport Noise Meeting to discuss forecast breach of summer noise contour and actions that might be taken
ii. Meeting 2017.6.12 @ 14.00 Discuss Potential Noise (and AMR)
iii. Meeting 2017.11.20 @ 12.00 Meeting to review compliance with conditions as approach 18mppa (also AMR compliance)
iv. Meeting 2017.12.13 @ 14.00 Condition 12 controlling noise contours at Luton Airport (following confirmation of exceedence of night noise cap)
v. Meeting 2018.4.3 @ 10.30 LLAOL - Noise meeting to discuss short term/ immediate actions by LLAOL, actions for summer 2019, longer term actions (noise reduction strategy) and scope of environmental statement to accompany Section 73 application
vi. Meeting 2018.8.10 @ 8.30 Pre Section 73 Meeting
vii. Meeting 2018.9.4 @ 09.00 Airport Planning
viii. Pre-application request from LLAOL (ref: PREAPP/18/00196) re variation to condition 10 (including scoping report) submitted 2018.11.21
ix. Meeting 2018.11.29 @ 12.00 LLAOL - S73 scope of environmental statement
x. Meeting 2019.2.11 @ 15.30 Luton Airport – LLAOL Plans for 2019
xi. Section 73 planning application to vary condition 10:noise (ref: 19/00428/EIA) submitted 2019.4.4
xii. Regulation 25 Request to LLAOL 2019.5.29
xiii. Meeting 2019.6.26 @ 11.00 Luton Airport 19 mppa meeting
xiv. Regulation 25 Request to LLAOL 2019.11.25
xv. Meeting 2020.1.22 @ 15.30 LLAOL 19mppa and Master Plan Update
xvi. Meeting 2020.6.5 @ 10.30 Luton Airport 19 mppa Skype meeting
xvii. Meeting 2020.8.28 @ 11.00 Skype meeting LBCWood - consultation discussion
xviii. Meeting 2020.9.7 @ 13.00 Luton Airport 19 mppa EIA discussion
xix. Section 73 planning application to vary conditions 8: passenger cap and 10: noise (ref: 21/00031/VARCON) submitted 2021.1.8
xx. Meeting 2021.3.8 @ 15.00 LLAOL Outline Carbon Reduction Plan
xxi. Meeting 2021.3.26 @ 9.30 Luton 19 mppa - Discussion on the outline CRP
xxii. Meeting 2021.4.13 @ 10.00 LLA 19mppa VARCON noise assessment
xxiii. Regulation 25 Request to LLAOL 2021.4.29 (and 2021.5.20)
xxiv. Meeting 2021.8.31 @ 10.00 19mppa - Further Consultation

xxv. Meeting 2021.10.6 @ 10.00 Luton Airport; 2100031VARCON -S106 meeting

In addition to the meetings listed above, you will be aware that matters relating to the breach of condition and the application to vary the condition were discussed at both the London Luton Airport Consultative Committee and the Noise and Track Sub-Committee (minutes of those meetings are available on line via the LLACC links). There were also separate meetings with the neighbouring authorities, firstly following the breach of condition (to address the steps the Council was taking and the response from the airport operator) and subsequently to keep the neighbouring authorities informed in the period leading up to the submission of the Section 73 planning application to vary condition 10 and during the period of determination.

I hope my response is helpful.

Next Steps
If you are not satisfied with my response you can ask for an internal review by contacting us at the address above or by email at FOI@luton.gov.uk

Please set out any specific concerns you have. Please quote the reference number provided above when contacting us.

Should you remain unhappy with the internal review, you can refer your concerns to the Information Commissioner:
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Telephone: 0303 123 1113

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Unsolicited Marketing
Please note that under the Privacy and Electronic Communications (EC Directive) Regulations 2003 Luton Council asks not to receive unsolicited marketing communications.

Yours sincerely,

[redacted]

Sunny Sahadevan
Head of Planning

Luton

Annex C: Request regarding documentation of pre-application meetings

Sunil Sahadevan
Head of Planning
Luton Council
Town Hall
George Street
LU1 2BQ

By email to: Sunil.Sahadevan@luton.gov.uk

22 July 2022

Dear Sunny,

Re: Disclosure of Documents to assist Luton Airport Planning Inquiry APP/B0230/V/22/3296455

Thank you for your emails of 1st July and 20th July. I note your request that we use the Council's FOI procedure and not David Gurtler to obtain information such as that we had previously requested on 16th June by email, which David had indicated should be submitted as an FOI request.

It took 2 weeks for that request to be refused on grounds of overall cost, and our email suggesting it be treated as individual requests and compromising on the wider-ranging items 6 and 7 has still not received a response after 3 weeks, with an indication we would have to pay for a more rapid reply.

As you know, we are all facing very tight deadlines for production of documents for the Inquiry, and Core Documents are required within the coming week, by 29th July. That is a month and a half after my first request, yet we still have nothing, and no certainty that the information will be provided.

Whilst the Council may, as it has, decide to channel our requests into the FOI process, we regard that as a parallel and quite separate process to requesting and obtaining information to assist the Inquiry. We therefore ask you to honour the Inspector's request that the Parties co-operate in the provision of information which is relevant to the matters to be considered at the Inquiry.

Our requests (repeated below) are relevant in assisting the Inquiry to appreciate "the effect of other consideration on the planning balance", a topic which the Inspector has confirmed will be in scope:

1) The original concession agreement between LBC and LLAOL (to which CD8.12 refers)

2) All subsequent documents of modification or variation to that concession agreement (CD8.12 being one such example but commercially redacted)

3) A year-by-year schedule of the concession fee rebates arising from the growth incentivisation arrangement between LBC, LLAL and LLAOL from 2014 onwards

4) The current status of the growth incentivisation arrangement, and if it has ceased any documents relating to the cessation

5) A year-by-year record from 2017 of the monitoring performed by the Council's Director of Planning of the terms of the S106 Agreement (clause 4.1(c) on p19 of CD8.42 refers)

6) Email or other correspondence between the Council and LLAL, and between the Council and LLAOL, relating to the forecast and actual breaches of noise contour conditions

7) Any emails or documents relating to the issue of enforcement of the breaches

A query was raised in the Pre-Inquiry meeting concerning the scope of items 6 and 7 on the list.

In respect of those particular points, we were advised in a much-delayed FOI response on 27th January, that Mr Gurtler [the Council's consultant Planning Officer] had entries in his calendar for nineteen pre-application meetings but that "no hard copies or electronic minutes" exist.

This response appears to be at odds with guidance provided by the Local Government Association that Officers should attend pre-application meetings and take a note for the file, along with notes of telephone conversations and a file of emails. For clarity, therefore, we are asking for disclosure of those file entries relating to the pre-application discussions associated with the first (19/00428/EIA) and second (21/00031/VARCON) planning applications which sought to regularise those breaches.

For the avoidance of doubt, we also regard as in scope of requests 4 and 7 above minutes of Luton Exec meetings which touched on the Incentive Scheme the Noise Contour Breaches when discussed in secret session and therefore (as we understand it) not able to be accessed via your website.

In summary, therefore, we look to you urgently to propose a way in which the above disclosures can promptly be made to assist an informed view to be taken by the Inquiry, well before the 29th July deadline, without charging us for time spent processing your decision to route the enquiries via FOI.

It certainly does not seem appropriate for this to "run in parallel with the Inquiry" as was mentioned when we spoke recently, since that approach is incompatible with having hard submission deadlines and the Inspector is unlikely to be happy to have documents drip-fed into the process as it runs.

I hope to hear from you very soon that these disclosures can and will be made early next week.

Yours sincerely,

Andrew Lambourne
Chair, LADACAN

Cc: Joanna Vincent, Gately and Hamer (for PINS)
Richard Wald, QC (for LADACAN)

Annex D: Further information from Growth Incentive Scheme Deed (CD8.12)

161. The 2015 Deed of Amendment and Restatement (the Deed) referred to in paragraph 64 above, refers in its Background text to the previous Deed of Amendment dated 2 January 2014:

162. *"(B) Pursuant to the Concession Agreement, a Concession Fee is payable by the Concessionaire to LLA. In order to help promote future growth at the Airport, the parties entered a deed of amendment dated 2 January 2014 to amend the terms relating to the Concession Fee on the basis that any agreed amendment to the Concession Fee is passed on, in full, by the Concessionaire in respect of qualifying passengers to all airlines providing those qualifying passengers (the "Original Deed of Amendment")*

163. *(C) The intention of the parties is that the reduction in the Concession Fee contemplated under this Agreement will benefit all relevant parties on a commercial basis. The parties further intend that the spirit of the arrangement is for all parties to benefit and if the arrangement is misused by any airline, the Concessionaire, in consultation with LLA may withdraw the benefit of the scheme for that particular airline."*

164. The Deed defines various terms including:

165. ***LONDON LUTON AIRPORT LIMITED,*** *(formerly known as Luton International Airport Limited), a private company limited by shares registered in England and Wales under company number 2020381 whose registered office is at Hart House Business Centre, Kimpton Road, Luton LU2 0LA* ***("LLA");***

166. ***"Airline Passenger Growth Incentive"*** *means, for each Growth Passenger carried by a Qualifying Airline in an Applicable Period, a [redacted] reduction in the Concession Fee to be paid by the Concessionaire to LLA;*

167. ***"Applicable Period"*** *means the period from the Effective Date to 31 March 2014 and each period of 12 months thereafter until the end of the Concession Year which finishes on 31 March 2020;*

168. ***"Growth Passenger"*** *means a Passenger carried by an Airline User in excess of the Passenger Threshold;*

169. ***"Super Growth Period"*** *has the meaning given to it in clause 4.1;* [which refers to a period starting in the second six months of the fourth Applicable Period, which in turn is defined in section 3.2 as 1 Apr 2016 – 31 Mar 2017, with a test defining a ***"Super Growth Period"*** relating to exceeding a Passenger Threshold by more than 10% in any 12 month period, and a further test defining a ***"Second Super Growth Period"*** relating to further exceeding that threshold by

more than 10%in the immediately subsequent 12 month period which, subject to fair play, would lead to the airline being classified as a *"**Super Growth Airline"***]

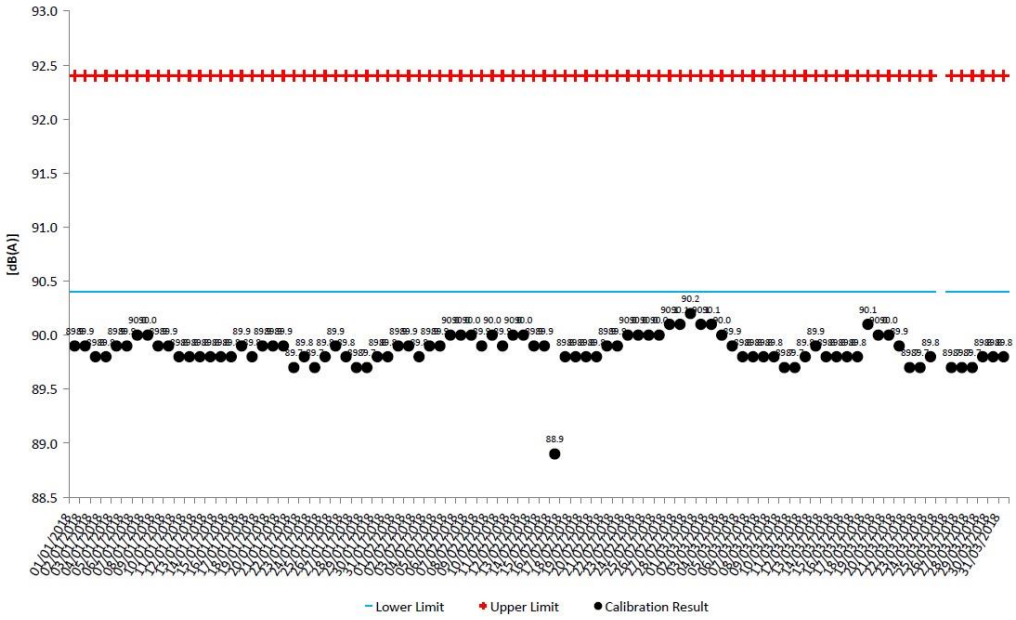
170. ***"Super Growth Incentive"*** *means, for each Growth Passenger carried by a Super Growth Airline in the Second Super Growth Period, a reduction in the Concession Fee to be paid by the Concessionaire to LLA in the Applicable Period in which the Second Super Growth Period falls, such percentage to be calculated as if the Airline Passenger Growth Incentive had not been incurred at all;*

171. *Subject to clause 6, an Airline User shall be a* ***"Qualifying Airline"*** *if the number of Passengers carried by that Airline User in an Applicable Period exceeds the Passenger Threshold for that Applicable Period.*

Annex E: Pages from NMT03 calibration reports disclosed by the Applicant

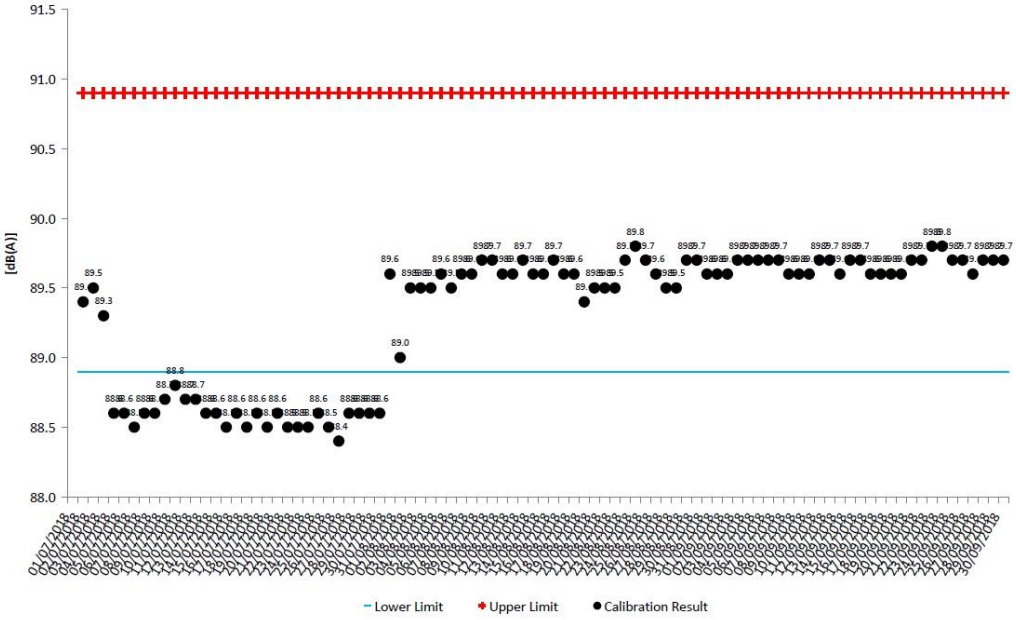
Microphone Check Results
Pepsal End Farm
01/01/2018 - 31/03/2018

London Luton Airport

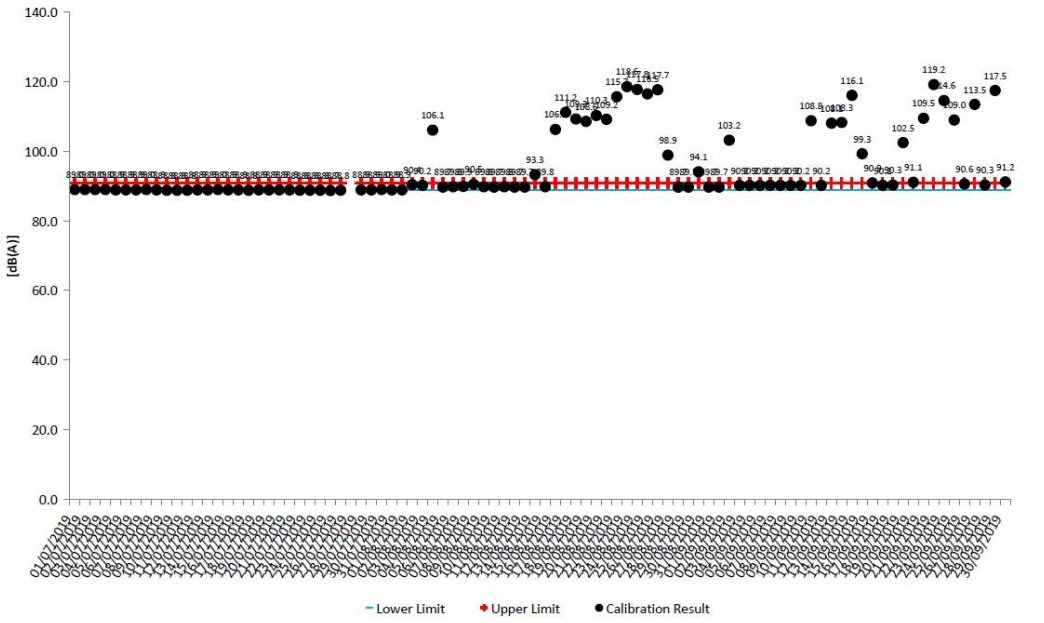


Microphone Check Results
Pepsal End Farm
01/07/2018 - 30/09/2018

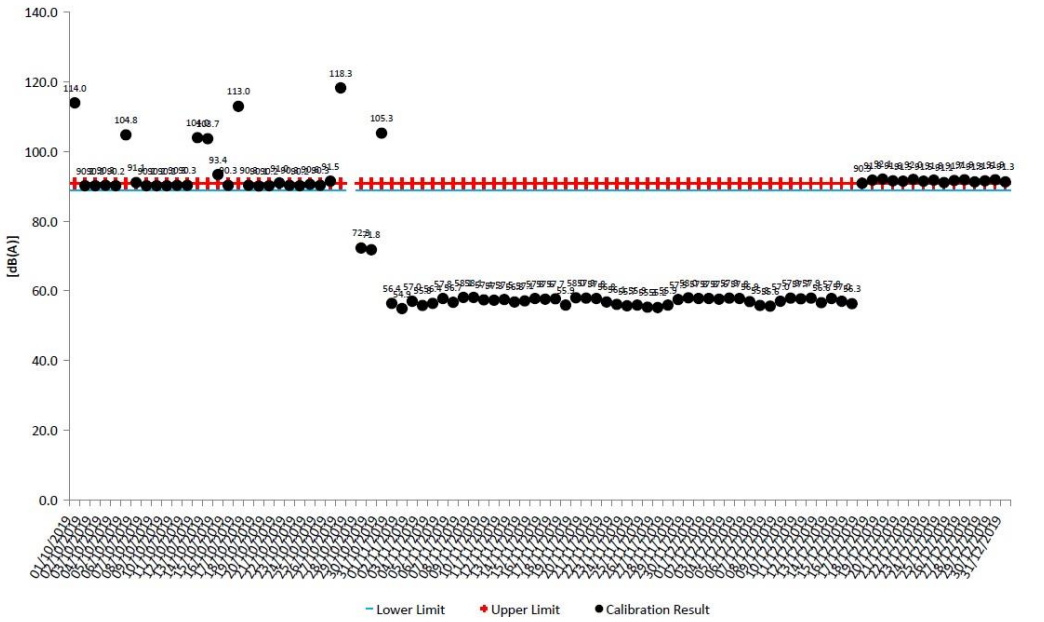
London Luton Airport



Microphone Check Results
Pepsal End Farm
01/07/2019 - 30/09/2019



Microphone Check Results
Pepsal End Farm
01/10/2019 - 31/12/2019



Annex F – Word Cloud from public responses opposed to the Application