

LONDON LUTON AIRPORT EXPANSION

ISSUE SPECIFIC HEARING 1 – DRAFT DEVELOPMENT CONSENT ORDER (DCO)

POST HEARING SUBMISSIONS

LUTON BOROUGH COUNCIL, CENTRAL BEDFORDSHIRE COUNCIL, HERTFORDSHIRE COUNTY COUNCIL, NORTH HERTFORDSHIRE DISTRICT COUNCIL, DACORUM BOROUGH COUNCIL

1. INTRODUCTION

- 1.1 This document sets out the post hearing submissions and summarises the oral submissions made jointly by Luton Borough Council, Central Bedfordshire Council, Hertfordshire County Council, North Hertfordshire District Council and Dacorum Borough Council (together, “the Host Authorities”) at Issue Specific Hearing 1 (“ISH1”) on the draft DCO held on 26 September 2023 in relation to Luton Rising’s (“the Applicant”) application for development consent for the London Luton Airport Expansion Project (the “Project”).
- 1.2 ISH1 was attended by the Examining Authority (the “ExA”), the Applicant, the Host Authorities, together with a number of other Interested Parties.
- 1.3 Where the ExA requested additional information from the Host Authorities on particular matters, or the Host Authorities undertook to provide additional information during the hearing, the Host Authorities’ response is set out in (in italics) or appended to this document. Where relevant, the Host Authorities have also included (in italics) post-hearing notes on various topics. Where applicable, the relevant ISH1 Action Point (as set out in the ExA’s publication of the same [EV6-007]) is cited.
- 1.4 This document does not purport to summarise the oral submissions of parties other than the Host Authorities, and summaries of submissions made by other parties are only included where necessary in order to give context to the Host Authorities’ submissions in response.
- 1.5 The structure of this document generally follows the order of items as they were dealt with at ISH1 set out against the detailed agenda items published by the ExA on 18 September 2023 [EV6-001] (the “Agenda”).
- 1.6 In addition, the Host Authorities have appended (at **Appendix 1**) to this note, responses to the Supplementary Agenda Questions published by the ExA on 19 September 2023 [EV6-002], where these are relevant to them.

2. SUMMARY OF ORAL SUBMISSIONS MADE

- 2.1 **Mr Robbie Owen**, a Partner of Pinsent Masons LLP, made the following oral submissions at ISH1 on behalf of the Host Authorities. For completeness, **Mr Michael Fry**, of Counsel, was representing Luton Borough Council at ISH1.

Article 2 (Interpretation) of the DCO

- 2.2 In response to a query from the ExA as to whether the scope of the definition of “maintain” in article 2 of the DCO [REP2-003] is appropriate, **Mr Owen** submitted that the Host Authorities would wait to review the Applicant’s written submission on this topic at Deadline 3 and provide a response in writing at a later deadline.
- 2.3 Further to an additional query from the ExA as to the acceptability of the definitions of “relevant planning authority” and “relevant highway authority” in article 2, Mr Owen confirmed that the Host Authorities would consider and confirm this in a post-hearing submission.

Post-hearing note (ISH1 Action Point 2): Having further reviewed the two definitions in question in article 2, the Host Authorities consider that they are, in principle, acceptable. However, it is suggested that the definition of “relevant planning authority” should be amended, to reference a “local planning authority”, as opposed to a “planning authority”.

Article 6 (Limits of works) of the DCO

- 2.4 In response to a query from the ExA, **Mr Owen** confirmed that the Host Authorities were in the process of considering the various limits set out in article 6 and shown on the works plans. He confirmed that the Host Authorities would engage with the Applicant should that review highlight any concerns.

Articles 44 (Interaction with LLAOL planning permission) and 45 (Application of the 1990 Act) of the DCO

- 2.5 **Mr Owen** confirmed to the ExA that the Host Authorities were aware of the existence and proposed effect of article 44 of the DCO and submitted that the Host Authorities had a number of concerns with the effect of the article, not least how existing controls through planning conditions and planning obligations would remain effective.
- 2.6 Mr Owen further confirmed to the ExA that the Host Authorities would provide, by Deadline 3, a list of the existing planning conditions regulating the existing airport (or those that would regulate the airport should planning permission for a higher cap be granted) that they would wish to see reflected in the DCO (or in an agreement made under section 106 of the Town and Country Planning Act 1990).
- 2.7 *Post-hearing note: The Host Authorities, including Luton Borough Council, have noted Action Points 6, 7 and 11. Accordingly, at **Appendix 2** of this note is attached the decision notice for planning permission reference 15/00950/VARCON, which*

currently caps the number of commercial passengers at 18 million passengers per annum at the Airport.

However, as the ExA will be aware, the decision on the planning application to increase the passenger cap at London Luton Airport is pending but is expected imminently. The conditions attached to any planning permission granted will be more relevant to the Project than those currently in existence and will, as a result, be directly relevant to these Action Points. As such, and bearing in mind Action Point 11, the Host Authorities propose that should planning permission be granted to increase the passenger cap at the Airport, a response on any conditions that need to be reflected in the DCO is covered in the joint response to Action Point 11, by which time a decision on the application to increase the passenger cap is expected to have been made. In light of this, the Host Authorities do not propose any further submission on this point at this time.

- 2.8 Mr Owen further summarised other concerns the Host Authorities have with the content of article 44, which included:
- 2.8.1 the fact that service of the notice triggering the LLAOL Permission ceasing to have effect under the article appears to be entirely at the discretion of the Applicant; and
 - 2.8.2 the effect this provision would have on the existing planning obligations and how any replacement obligations would be secured.
- 2.9 Turning to article 45 of the DCO, Mr Owen acknowledged the drafting of paragraph (1) was reasonably 'standard' and the Host Authorities did not have an objection to the principle of the provision. However, he queried whether it was appropriate that all land within the Order limits should be treated as 'operational land' under the Town and Country Planning Act 1990.
- 2.10 **Mr David Gurtler**, of Luton Borough Council, confirmed that Luton Borough Council also had concerns around the effect of article 45 on the ability for the Applicant to construct a wide range of works under permitted development rights (albeit recognising there are some limitations on these) under the Town and Country Planning Act 1990, whereby the Council would not be able to exert any development control over such works.
- 2.11 Mr Owen concluded by stating that the Host Authorities could not confirm their agreement to the drafting of article 45 as it currently stands as this required further consideration. In particular, they would wait to review any written submission from the Applicant on this point before commenting further.
- 2.12 In summary, Mr Owen submitted that, ultimately, articles 44 and 45 are novel and relatively complex provisions. Whilst no criticism is made of that, the Host Authorities need an opportunity to properly work through the effect of the provisions, together with the Applicant. Mr Owen noted that the Applicant was open to engagement on the DCO, which was welcomed.

Requirements (Schedule 2 to the DCO)

Requirement 2 (Amendments to approved details)

- 2.13 In response to a query from the ExA on the effect of Requirement 2 contained in the DCO, **Mr Owen** stated that whilst the Host Authorities did not have any issue with that provision specifically, there was a wider concern around the deemed discharge provisions that applied to all of the requirements, by virtue of Requirement 35. These had been raised in the Host Authorities' various Local Impact Reports and required further engagement with the Applicant.

Requirement 7 (Notice of commencement of authorised development)

- 2.14 Following a discussion on the potential phasing of the Project and Requirement 7, Mr Owen confirmed that the Host Authorities would respond in writing at Deadline 3 on the question as to whether there should be some sort of phasing requirement.

Post-hearing note (ISH1 Action Point 15): *At present, the Host Authorities are not specifically seeking a phasing requirement and acknowledge the Applicant's submissions both at ISH1 and in writing in response to the Local Impact Reports as to the intention of the drafting as it presently stands and the reasons for it. However, the Host Authorities do consider further clarity is required on the concept of a 'part' of the authorised development, given the lengthy time period over which it may be implemented (notwithstanding Requirement 1(2)). As such, the Host Authorities will carefully review the Applicant's written submissions on this point.*

It is worth noting that should the Host Authorities get comfortable with the Applicant's intentions, they are seeking further binding commitments around prior notice as to the Project programme and structure of phases/part, to allow for resource planning, amongst other things. This could be included in the proposed agreement under section 106 of the Town and Country Planning Act 1990 if not on the face of the DCO.

Finally, and on a related point, the Host Authorities consider that a longer time period than 14 days' notice of the commencement of a 'part' of the authorised development is required under Requirement 7. The Host Authorities consider 42 days (6 weeks) to be more reasonable.

Requirement 8 (Code of construction practice)

- 2.15 Mr Owen submitted that the current drafting of Requirement 8(1) is deficient, by reference to the obligation being to carry out the authorised development "substantially in accordance with" the Code of Construction Practice ("CoCP"). He stated that because the CoCP is proposed to be a certified document under the DCO, compliance with its contents should be **fully** secured. Mr Owen also pointed out that the same principle applies to any "subsequent plans" approved under the CoCP – these plans are full and final and should be fully secured by Requirement 8(1). For this reason, Mr Owen submitted that it is the Host Authorities' position that the word "substantially" should be deleted.

- 2.16 Noting the Applicant's comparison with the A428 Black Cat to Caxton Gibbet Development Consent Order 2022 where it had been said that similar drafting was approved by the Secretary of State, Mr Owen submitted that such drafting was used in a different context (in relation to the subsequent development of an Environmental Management Plan) and compliance with the 'final' management plan was fully secured.
- 2.17 In response to a query from the ExA, Mr Owen agreed that the Host Authorities would confirm in a written submission as to whether Requirement 8(2), in their view, should be amended to make explicit reference to the relevant planning authority approving the various management plans following consultation with other bodies, in addition to the relevant highway authority (such as the Environment Agency and/or Natural England).

Post hearing note (ISH1 Action Point 17): Having considered the ExA's question, the Host Authorities' view on this point is that there would likely be merit in certain consultee bodies being expressly mentioned within Requirement 8(2), not least because it clearly sets out the obligations placed on the relevant planning authority (although it is noted that the drafting doesn't preclude the relevant planning authority consulting such bodies at their discretion). Indeed, this approach would likely apply beyond simply Requirement 8, extending (where relevant) to any Requirement where a 'plan' or similar is required to be approved.

However, should the drafting be amended in this way, it further reinforces the Host Authorities' concerns around the deemed discharge periods, given this is another 'hoop' to jump through prior to any decision being able to be reached.

Ultimately, this will also be a point for the Environment Agency, Natural England and, potentially, Historic England to comment on.

- 2.18 Mr Owen concluded by stating, linked to the earlier discussion on Requirement 7, that the Host Authorities would find it helpful to understand which of the management plans are proposed to apply across the entirety of the authorised development and which would be on a 'part by part' basis.

Green Controlled Growth (Part 3)

- 2.19 Mr Owen stated that, in relation to the Requirements relating to Green Controlled Growth ("GCG"), the Host Authorities had raised a number of concerns as set out in their various Local Impact Reports / Written Representations. He submitted that because the GCG framework is entirely unprecedented and, indeed, critical to ensuring the effects of the Project are adequately controlled, further engagement is needed between the Host Authorities and the Applicant to work through the various concerns and queries outstanding. He confirmed that meetings had been arranged between the parties but a large amount of work has still to be done before the Host Authorities can confirm they are content with the GCG framework in principle.
- 2.20 Mr Owen continued by stating that whilst the Host Authorities could comment on the DCO drafting related to GCG, and had done so on a preliminary basis in written

submissions, the Host Authorities first had to be comfortable with the GCG framework on an in-principle basis, which could only follow technical engagement between the parties. He further stated that once the Host Authorities had got to that position, they would then be able to properly turn to the DCO drafting, including commenting on the Requirements in Part 3 but they are not yet ready to do so. Mr Owen concluded by stating that, as a result, the Host Authorities fully reserved their position on the GCG-related Requirements – the Project is the first time the GCG concept is being promoted in a DCO and will therefore require detailed and careful scrutiny which can only take place through technical discussions with the Applicant.

- 2.21 That notwithstanding, Mr Owen stated that the Host Authorities were, in principle, content with the concept of the Environmental Scrutiny Group (“ESG”) and associated technical panels, as secured in Requirement 20 (the drafting of which is broadly preceded in the Silvertown Tunnel Order 2018), but the specific operation of the ESG in line with the other GCG Requirements necessitated further consideration.

***Post hearing note (ISH1 Action Point 23):** Dacorum Borough Council (“DBC”) confirms that it remains of the view that it should be a member of the ESG. Given the nature of the matters controlled by GCG (namely that they will extend and have impacts over a wide area), it appears to DBC to be entirely reasonable for it to have a role in the on-going scrutiny of GCG to ensure that adverse effects on its residents are adequately controlled.*

Requirements 26 and 27

- 2.22 Mr Owen queried whether the Applicant needed to give consideration to the drafting of Requirements 26 and 27 which variously refer to the “authorised development”, “the airport comprised in the authorised development” and “the airport”. Mr Owen submitted that the rationale for that inconsistency is not clear and should be revisited, with it likely being the case that the correct formulation is “the airport”.

Schedule 9 to the DCO

- 2.23 In response to a query from the ExA, **Mr Owen** requested that the Applicant confirm the rationale for the inclusion of each of the documents listed as being a certified document in Schedule 9 to the DCO, as there was a query as to whether it was strictly necessary for all of these documents to be formally certified.

Legal Agreements and Protective Provisions

- 2.24 **Mr Owen** confirmed that the Applicant had very recently provided a programme in relation to the proposed agreement under section 106 of the Town and Country Planning Act 1990 to be entered into by the Applicant and various of the Host Authorities. Mr Owen confirmed that the Host Authorities were considering the programme and whether it was realistic and would respond to the Applicant as soon as they were able.

- 2.25 Mr Owen also stated that a key point outstanding between the parties on this topic is the Applicant's understood refusal to cover the Host Authorities' legal costs in negotiating this agreement. This is contrary to the generally accepted practice in relation to such agreements (whereby developers cover these costs) and the Host Authorities therefore invite the Applicant to reconsider this position so discussions can commence.
- 2.26 Moving beyond this agreement, Mr Owen stated that the Host Authorities with highway authority functions would also be seeking highway-related legal agreements with the Applicant, to deal with a number of issues such as:
- 2.26.1 Submission, review, and approval of detailed design, specifications, and schedules;
 - 2.26.2 Inspections of works;
 - 2.26.3 Defects;
 - 2.26.4 Maintenance periods;
 - 2.26.5 Handover of works;
 - 2.26.6 Transfer of warranties; and
 - 2.26.7 Covering of reasonable costs.
- 2.27 Linked to this point, Mr Owen also referenced the fact that the Host Authorities with highway authority functions would also be seeking protective provisions on the face of the DCO for their benefit.

APPENDIX 1

HOST AUTHORITIES' RESPONSE TO SUPPLEMENTARY AGENDA QUESTIONS

Number	Subject	Response by	Question/ Clarification	Host Authorities' Response
GENERAL				
ISH1.A.09	Clarification	National Highways and the Relevant Highway Authorities	Article 9 (3) Article 9(3) seeks to disapply several sections of the New Roads and Street Works Act 1991 as amended by the Traffic Management Act 2004. Can you clarify if you are satisfied that these sections can be disapplied and if not, why not?	The Host Authorities acknowledge that this type of provision is precedented on DCOs made to date. However, the scope of this provision appears to the Authorities to be exceptionally wide, meaning a number of powers they have to control works on the highway would be disapplied. It is the Host Authorities' view that a number of the sections being disapplied would reduce or constrain their ability to effectively discharge their network management duties. This requires further engagement with the Applicant.

Number	Subject	Response by	Question/ Clarification	Host Authorities' Response
ISH1.A.10	Clarification	Relevant Highways Authorities	<p>Article 9 (9) (a) and (b) Please confirm if you are satisfied with this drafting and if not, why not and what alternative drafting would you propose.</p>	<p>These provisions, amongst other things, restrict the sorts of conditions that can be attached to a permit under the existing East of England Permit Scheme. The Host Authorities have highlighted this previously as a concern in the Local Impact Reports and the Applicant's response to these is noted, whereby the Applicant confirms it is considering the points further. As such, the Host Authorities require further engagement with the Applicant to understand the intentions behind this provision further.</p>
ISH1.A.13	Clarification	Applicant and Relevant Highways Authorities	<p>Article 11 (3) For clarity does the drafting need to be amended to make reference to written consent?</p>	<p>The Host Authorities would support this proposed amendment.</p>
ISH1.A.14	Clarification	Relevant Highways Authorities	<p>Article 11 (4), Article 13 (6), Article 15(2), Article 16(9), Article 21 (6) Is the 28 day period stipulated for determination of an application for consent under these paragraphs a sufficient period of time, if not, why not and what would be an appropriate determination period?</p>	<p>As set out in the various Local Impact Reports, the Host Authorities' position is that this time period is not sufficient. The Host Authorities acknowledge the need for an equitable balance between timely delivery of the Project and a fair opportunity for the Authorities to consider proposals. It is hoped that engagement with the Applicant will give rise to an opportunity to reach a compromise position that achieved this balance.</p>

Number	Subject	Response by	Question/ Clarification	Host Authorities' Response
ISH1.A.15	Clarification	Relevant Highways Authorities	<p>Article 12 (1) and (2) As currently drafted the cost of and responsibility for the maintenance of any new, altered or diverted street would be the responsibility of the relevant highway authority from the time of its completion. Is this appropriate, if not, why not and at what point should it become the responsibility of the relevant highways authority</p>	As set out in the various Local Impact Reports, the Host Authorities do not consider this to be appropriate. There is precedent for maintenance periods being contemplated on numerous made DCOs, including in article 11 of the Manston Airport Development Consent Order 2022. Further engagement is required with the Applicant on this point and is something that could potentially be resolved through a separate legal agreement.

Number	Subject	Response by	Question/ Clarification	Host Authorities' Response
ISH1.A.26	Drafting	Applicant and the Relevant Planning Authorities	<p>Article 22</p> <ol style="list-style-type: none"> 1. Should this have the additional wording in bold added? 'The undertaker may fell or lop any tree or shrub, other than those to be retained by Requirement 9, within or overhanging the Order limits....' 2. Given the importance of retaining hedgerows as mitigation as currently drafted the powers to remove hedgerows given by this article would be very wide ranging. Therefore should 22(4) be reworded as follows and moved to (2) with current clauses (2) and (3) being renumbered (3) and (4) ie 'The undertaker may, for the purposes of carrying out the authorised development, but subject to paragraph (3), remove any hedgerow where it is demonstrated by the undertaker to the relevant planning authority, and the relevant planning authority certifies accordingly, that the removal of the hedgerow would not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement. <p>(3) In carrying out any activity authorised by paragraph (1) and (2), the undertaker, must do no unnecessary damage to any tree, shrub or hedgerow and must pay compensation to any person for any loss or damage arising from such activity.</p>	The Host Authorities consider that, in particular, the second point raised by the ExA would be a helpful addition to help regulate the environmental effects of the Project.

Number	Subject	Response by	Question/ Clarification	Host Authorities' Response
			(4) Any dispute as to a person's entitlement to compensation under paragraph (3), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.	
ISH1.A.29	Clarification	Applicant, the Lead Local Flood Authorities and the Sewerage and Drainage undertakers	<p>Article 43</p> <p>1. Could the relevant authorities and bodies confirm that the disapplication's sought in (1) (a)-(c) are acceptable and if not, why not?</p> <p>Should (2) include a reference to Article 33 as well as Article 34?</p>	As discussed at Compulsory Acquisition Hearing 1 (and set out previously in written submissions, such as the relevant Local Impact Reports), the Host Authorities that hold drainage functions do not agree to the proposed disapplication of the various provisions of the Land Drainage Act 1991 at present, absent a set of acceptable protective provisions for their benefit in the DCO. The Host Authorities await the Applicant's response on this point.
ISH1.S2.07	Clarification	Applicant and Luton Borough Council (LBC)	<p>Requirement 6</p> <p>Explain why a 4.4 meter (m) high Engine Run Up Bay noise barrier (work No 2e) is proposed to replace the existing 5m barrier in Phase 1 and why this would not give rise to an increase in noise emissions compared to the baseline situation</p>	The Host Authorities look forward to the response from the Applicant. However, it should be noted that the Host Authorities' acoustic consultant, Ben Holcombe of Suono, has reviewed the ground noise methodology and assessment, and is satisfied with the contents of these, and finds the outcomes to be acceptable. Any mitigation specified to achieve these outcomes is therefore acceptable, provided it is suitably secured.

Number	Subject	Response by	Question/ Clarification	Host Authorities' Response
ISH1.S2.12	Drafting	Applicant, LBC and Natural England	<p>Requirement 11 (2) As currently drafted either a scheme of mitigation measures or a protected species licence would be required. Given the requirement relates to protected species if a scheme of mitigation measures is proposed should the relevant planning authority consult with Natural England, please amend accordingly.</p>	Luton Borough Council is receptive to the drafting being amended so as to refer to explicit consultation with Natural England on this matter.
ISH1.S2.13	Drafting	Applicant, Environment Agency and LBC	<p>Requirement 12</p> <ol style="list-style-type: none"> 1. As currently drafted if unexpected contamination is identified during construction work could continue. Is this appropriate or should work cease for that part of the scheme until an assessment of the risks and remediation options has been submitted to and approved by the relevant planning authority? Please amend drafting as necessary. 2. Paragraph 2 refers to 'detailed site investigations'. Can you confirm where these are secured in the Order and how they link to this paragraph? Is it appropriate that under current drafting construction work could continue in the absence of an approved written scheme and programme for remedial measures? 	Luton Borough Council awaits the Applicant's response on these points, but in principle would agree with the thrust of the ExA's queries. Where effects could arise from on-going work, that work should cease pending the implementation of appropriate mitigation.

Number	Subject	Response by	Question/ Clarification	Host Authorities' Response
ISH1.S2.15	Drafting	Applicant and LBC	<p>Requirement 13 (2) As currently drafted this includes the phrase 'must reflect the principles set out' such drafting is not precise. Subject to the outcome of the discussions at the ISH regarding the acceptability of 'substantially in accordance with', for consistency please delete 'must reflect' and replace with 'in accordance' or 'substantially in accordance with'.</p>	<p>Luton Borough Council would support this proposed amendment. Indeed, whilst the Host Authorities have not commented on each and every relevant Supplementary Agenda Question, they do support the ExA's queries around the precision of the drafting generally.</p>
ISH1.S2.19	Drafting	Applicant and relevant planning authorities	<p>Requirement 35 As currently drafted this requirement would give deemed approval for the discharge of any details, subject to a number of caveats, if no decision is made within 8 weeks from submission of those details. Is this appropriate or should the requirement be amended to allow the undertaker to appeal for non-determination once the relevant time period has passed?</p>	<p>The Host Authorities have set out their concern on this provision in the various Local Impact Reports. See the response above to ISH1.A.14 which equally applies here. An appeal process for non-determination is a concept that the Host Authorities will consider further and respond to at a subsequent deadline, following engagement with the Applicant.</p>

Number	Subject	Response by	Question/ Clarification	Host Authorities' Response
ISH1.S2.20	Drafting	Applicant and LBC	<p>Requirement 35 (1) To improve precision should the drafting be amended as follows:</p> <ul style="list-style-type: none"> (a) the day immediately following that on which a valid application is received by the discharging authority. Such validity to be confirmed by the discharging authority within 5 days of the receipt of the application; (b) the day immediately following that on which further information has been supplied by the undertaker under requirement 36 (further information); or such longer period as may be agreed between the undertaker and the discharging authority. 	The Host Authorities would support this proposed amendment.

APPENDIX 2

PLANNING PERMISSION 15/00950/VARCON

BOROUGH OF LUTON

**TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) ORDER
2010**

PLANNING PERMISSION NOTICE

Name and Address of Agent (if any):

Neil Trollope
Everdene House Deansleigh Road
Bournemouth
Dorset
BH7 7DU

Name and Address of Applicant:

London Luton Airport Operations
Limited
London Luton Airport
Navigation House
Airport Way
Luton

Date of Application: 25th June 2015

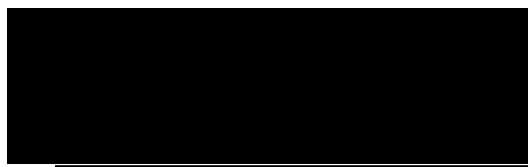
Application No: 15/00950/VARCON

PARTICULARS AND LOCATION OF DEVELOPMENT:

Full planning application for dualling of Airport Way/Airport Approach Road and associated junction improvements, extensions and alterations to the terminal buildings, erection of new departures/arrivals pier and walkway, erection of a pedestrian link building from the short-stay car park to the terminal, extensions and alterations to the mid-term and long-term car parks, construction of a new parallel taxiway, extensions to the existing taxiway parallel to the runway, extensions to existing aircraft parking aprons, improvements to ancillary infrastructure including access and drainage, and demolition of existing structures and enabling works. Outline planning application for the construction of a multi-storey car park and pedestrian link building (all matters reserved) 12/01400/FUL - Variation of Condition 11 (i) - Noise violation limits.

London Luton Airport, Airport Way, Luton, Bedfordshire

The proposal is in conformity with (saved) Policy(ies) LP1, LLA1, ENV9, ENV10, T3, T8 and U3, of the Luton Local Plan, Plan for Growth 2011, National Planning Policy Framework 2012, Aviation Policy Framework 2013, National Infrastructure Delivery Plan 2016-2021, Luton Local Plan 2001-2011 and Emerging Luton Local Plan 2011-2031 (pre-submission version October 2015). Therefore, in pursuance of their powers under the Town and Country Planning Act 1990, the Council of the Borough of Luton HEREBY GRANT CONSENT for



DEVELOPMENT CONTROL MANAGER

13th October 2017

See Notes for Applicants Attached.

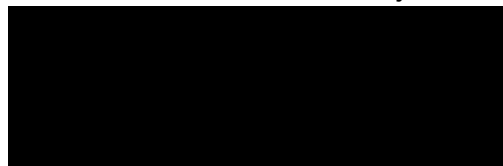
BOROUGH OF LUTON

**TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 2015**

Continuation (Forming part of Application No: 15/00950/VARCON)

the development described above in accordance with the details given in the application numbered above, subject to the following condition(s):-

- 1 Phase 1 of the development shall be carried out in accordance with the Phasing Scheme approved on 23 April 2015 (ref: 15/00159/DOC) and Phases 2 and 3 shall be carried out in accordance with the Phasing Scheme approved on 28 October 2016 (ref: 16/01484/DOC). Otherwise no development of any phases shall take place until a scheme for the Phasing of Development shall be submitted to the Local Planning Authority. The scheme as submitted shall include the timescales for commencement of each of the phases. The scheme as approved shall be implemented in full and in accordance with the agreed timescales.
- 1 *Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LP1, ENV9 and ENV10 of the Luton Local Plan and the National Planning Policy Framework.*
- 2 The landscaping scheme shall be carried out in accordance with details approved on 21 May 2015 (ref: 15/00449/DOC). Within one month of the completion of the landscaping scheme written confirmation of the completion date shall be submitted to the Local Planning Authority. If within a period of five years from the initial date of planting of any tree or shrub, any such plant is removed, uprooted or destroyed or dies, or becomes in the opinion of the Local Planning Authority, damaged, diseased or defective, another tree or shrub of the same species and size as that originally planted shall be replanted in the same location or as otherwise detailed in the scheme. The scheme as approved shall be implemented in full within the first planting season following completion of each of the agreed phases within Condition 1.
- 2 *Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LP1, ENV9 and ENV10 of the Luton Local Plan and the National Planning Policy Framework.*
- 3 The buildings shall be constructed in accordance with the details and samples approved on 12 November 2015 (ref: 15/00160/DOC).
- 3 *Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of*



DEVELOPMENT CONTROL MANAGER

13th October 2017

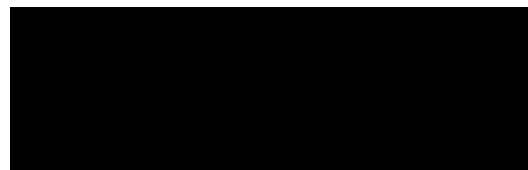
BOROUGH OF LUTON

**TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 2015**

Continuation (Forming part of Application No: 15/00950/VARCON)

Policies LP1, ENV9 and ENV10 of the Luton Local Plan and the National Planning Policy Framework.

- 4 Phase 1 of the development shall be carried out in accordance with the details contained in the Protected Species Management Plan approved on 28 January 2015 (ref: 14/01471/DOC) and Phases 2 and 3 shall be carried out in accordance with the details contained in the Protected Species Management Plan approved on 8 May 2017 (ref: 17/00459/DOC).
- 4 *Reason: To safeguard any populations of these protected species on the application site. To accord with the objectives of Policies LP1 and ENV5 of the Luton Local Plan and the National Planning Policy Framework.*
- 5 Lighting associated with Phase 1 of the development shall be carried out in accordance with the details approved on 4 June 2015 (ref: 15/00451/DOC). No external lighting shall be installed within any subsequent phase of the development, other than in accordance with a scheme to be submitted to and approved by the Local Planning Authority. The scheme as approved shall be implemented in full and shall be subject to review in accordance with such agreed scheme.
- 5 *Reason: In the interests of amenity, aircraft and public safety. To accord with the objectives of Policies LP1, ENV9 and ENV10 of the Luton Local Plan and the National Planning Policy Framework.*
- 6 Phase 1 of the development shall be carried out in accordance with the Construction Environmental Management Plan approved on 14 August 2015 (ref: 15/00452/DOC) and Phases 2 and 3 shall be carried out in accordance with the Construction Environmental Management Plan approved on 8 May 2017 (ref: 17/00460/DOC).
- 6 *Reason: To minimise the environmental impact and disturbance to existing residents, vegetation and wildlife during construction of the development in accordance with Policies LP1 and ENV5 of the Luton Local Plan and the National Planning Policy Framework.*
- 7 The development shall be carried out in accordance with the archaeological Written Scheme of Investigation approved on 24 December 2014 (ref: 14/01496/DOC)



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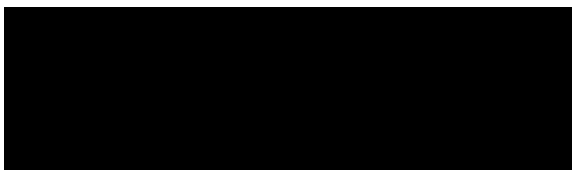
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- 7 *Reason: To ensure that the development allows for the recording of potential archaeological information. To comply with Policy ENV6 of the Luton Local Plan and the National Planning Policy Framework.*
- 8 At no time shall the commercial passenger throughput of the airport exceed 18 million passengers in any twelve month period. From the date of this permission the applicant shall every quarter report in writing to the Local Planning Authority the moving annual total numbers of passengers through the airport (arrivals plus departures). The report shall be made no later than 28 days after the end of each quarter to which the data relates.
- 8 *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 amenities of the surrounding area. To accord with the objectives of Policy LP1 of the Luton Local Plan and the National Planning Policy Framework.*
- 9 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 include:

- i) Measures with the purpose of phasing out of night time (2300 to 0700) operations by aircraft with a QC value of greater than 1 on either departure or arrival.
- ii) Monitoring and review of the scheme not later than the 1st and 4th year after its introduction and every subsequent five years.
- iii) Limits during the night time period (2330 to 0600) of:
 - a) Total annual movements by aircraft (per 12 month period) of no more than 9,650 movements; and
 - b) Total annual noise quota movements of no more than 3,500 which, using all reasonable endeavours, shall be reduced at each review until it reaches a point where it does not exceed 2,800 by 2028.
- iv) Limits for the Early Morning Shoulder Period (0600 to 0700) of not more than 7,000 movements in any 12 month period.
- v) Reporting of the actual and forecast total number of aircraft movements for the preceding and next 12 months to the Local Planning Authority every three months.



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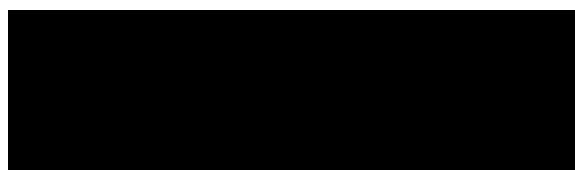
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- vi) Within six months of the commencement of the development, a progressive reduction in the night-time (2300-0700) maximum Noise Violation Limits (NVL) by the noisiest aircraft shall be implemented, as follows:
 - o 80dB(A) the date hereof
 - o 79dB(A) from 1st January 2020
 - o 77dB(A) from 1st January 2028
 - vii) Within six months of the commencement of the development, a progressive reduction in the daytime (0700 - 2300) maximum NVL by the noisiest aircraft shall be implemented, as follows:
 - o 82 dB(A) the date hereof
 - o 80 dB(A) from 1st January 2020
- 9 *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.*
- 10 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.
- The area enclosed by the 57dB(A) Leq16hr (0700-2300) contour shall not exceed 19.4 sq km for daytime noise, and the area enclosed by the 48dB(A) Leq8hr (2300-0700) contour shall not exceed 37.2 sq km for night-time noise, when calculated by the Federal Aviation Authority Integrated Noise Model version 7.0-d (or as may be updated or amended).
- Within five years of the commencement of development a strategy shall be submitted to the Local Planning Authority for their approval which defines the methods to be used by LLAOL or any successor or airport operator 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.
- 10 *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.*



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- 11 The development shall be operated in accordance with the Noise Control Monitoring Scheme as approved on 2 March 2015 (ref: 14/01519/DOC).

For the avoidance of doubt the controls include:

- i) Fixed noise monitoring terminals and track keeping system (vertical and horizontal)
- ii) Complaint handling system
- iii) Sanctions to be imposed on infringement by aircraft in respect of track keeping and noise violation limits in accordance with condition 9 (parts vi and vii) of this permission
- iv) Arrangements for the verification of the submitted information

A review shall take place not later than the 1st and 4th year after introduction and every subsequent 5 years.

- 11 *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.*

- 12 The development shall be operated in accordance with the scheme to control ground noise approved on 2 March 2015 (ref: 14/01519/DOC).

- 12 *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.*

- 13 The development shall be implemented in accordance with the Comprehensive Surface Water Management Strategy approved on 18 May 2015 (ref: 15/00187/DOC).

- 13 *Reason: To prevent surface and groundwater pollution. To accord with the objectives of policy ENV14 of the Luton Local Plan and the National Planning Policy Framework.*

- 14 The detailed surface water drainage scheme for Phase 1 shall be carried out in accordance with the details approved on 8 December 2015 (ref: 15/00291/DOC). No subsequent phase of development shall begin until a detailed surface water drainage scheme for that phase has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be


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generally in accordance with the Flood Risk Assessment (FRA) prepared by Jacobs, reference B1074100/22.2, issue 3, dated November 2012,(within Technical Appendix J of the Environmental Statement submitted with application 12/01400) and the scheme shall include details of soakaways and a restriction in run-off and surface water storage on site. The scheme as approved shall be implemented in full before completion of the relevant phase.

- 14 *Reason: To prevent the increased risk of flooding and to improve and protect water quality, habitat and amenity. To accord with the objectives of policy ENV14 of the Luton Local Plan and the National Planning Policy Framework.*
- 15 Phase 1 of the development shall be carried out in accordance with the details approved on 24 March 2016 in relation to measures to deal with contamination (ref: 15/00756/DOC) and Phases 2 and 3 shall be carried out in accordance with the Contamination Risk Assessment Report approved on 7 April 2017 (ref: 17/00173/DOC).
- 15 *Reason The site is located in a sensitive groundwater area over a Principal Chalk Aquifer within a source protection zone 3. To accord with the objectives of policy ENV14 of the Luton Local Plan and the National Planning Policy Framework.*
- 16 No phase of the development shall be occupied until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation for that phase has first been submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.
- 16 *Reason: To protect groundwater. To accord with the objectives of Policy ENV14 of the Luton Local Plan and the National Planning Policy Framework.*
- 17 If, contamination not previously identified is found to be present at the site during the construction of a phase of development, no further development of the phase shall be carried out until the developer has first submitted a


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remediation strategy for approval to the Local Planning Authority and that such a strategy shall have been approved in writing. The remediation strategy shall be implemented as approved.

- 17 *Reason: Intrusive investigations will not necessarily capture all contaminants present, hence the need to appropriately address any new source discovered during excavation and development. To accord with the objectives of policy ENV14 of the Luton Local Plan and the National Planning Policy Framework.*
- 18 No infiltration of surface water drainage into the ground shall take place other than with the express written consent of the Local Planning Authority first having been obtained. The development shall be carried out in accordance with the approved details in accordance with an agreed timescale and phasing as applicable.
- 18 *Reason: To protect groundwater. To accord with the objectives of policy ENV14 of the Luton Local Plan and the National Planning Policy Framework.*
- 19 Phase 1 of the development shall be carried out in accordance with the details approved on 18 December 2015 in relation to piling (ref: 15/00756/DOC). No subsequent phase of the development which involves piling or other penetrative methods of forming foundations shall take place other than in accordance with a scheme which shall have first been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved.
- 19 *Reason: To protect groundwater. Piling can create new pathways for pollutants and introduce new contaminants into the subsurface. To accord with the objectives of policy ENV14 of the Luton Local Plan and the National Planning Policy Framework.*
- 20 Phase 1 of the development shall be implemented in accordance with the measures to protect existing monitoring boreholes approved on 11 May 2015 (ref: 15/00454/DOC) and phases 2 and 3 shall be carried out in accordance with the Borehole Protection Report approved on 28 March 2017 (17/00176/DOC).
- 20 *Reason: To safeguard the existing monitoring arrangements in the interests of the proper planning of the area. To accord with the objectives of policy ENV14 of the Luton Local Plan and the National Planning Policy Framework.*


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- 21 Phase 1 of the development shall be carried out in accordance with the foul drainage details approved on 14 August 2015 (ref: 15/00188/DOC).

Before the commencement of each subsequent phase, full details of the proposed means of foul drainage shall first be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details prior to each phase coming into operation.

- 21 *Reason: To prevent pollution of the water environment and to ensure a satisfactory form of development. To accord with the objectives of policy ENV14 of the Luton Local Plan and the National Planning Policy Framework.*

- 22 The car parking areas within Phase 1 shall be constructed and managed in accordance with details approved on 21 January 2016 (ref: 15/00659).

The scheme as approved shall be implemented in full prior to that phase coming into operation. The areas within the application site which are shown to be in use for car parking in the application details shall not be used for any other purpose other than the parking of vehicles by passengers, staff and contractors servicing the airport.

- 22 *Reason: To ensure that adequate provision is made for vehicles to park clear of the highway in the interest of road safety and to prevent unacceptable environmental impact on neighbouring residential areas. To accord with the objectives of Policies LP1 and T3 of the Luton Local Plan and the National Planning Policy Framework.*

- 23 The surfacing and drainage of car parking areas shall be carried out in accordance with the details approved on 22 September 2015 (ref: 15/00455/DOC).

- 23 *Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of policies ENV14 and T3 of the Luton Local Plan and the National Planning Policy Framework.*

- 24 The Passenger and Staff Travel Plan shall be implemented in accordance with the details approved on 23 September 2015 (ref: 15/00761/DOC).


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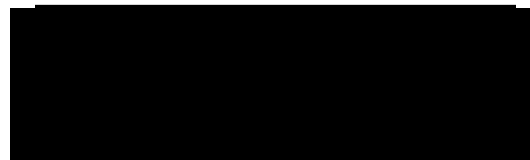
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- 24 *Reason: To seek to reduce single occupancy vehicle trips to the site and to accord with the objectives of policy LP1 of the Luton Local Plan and the National Planning Policy Framework.*
- 25 The Highway Improvement Schemes (comprising [i] improvements to the airport access road and [ii] improvements to the Percival Way roundabout) shall be carried out in accordance with the details approved on 8 May 2015 (ref: 15/00456/DOC) or otherwise in accordance with the provisions of the agreement dated 11 November 2015 under Section 278 of the Highways Act 1980 (or any variation to or replacement of such agreement).
- 25 *Reason: To ensure that the public highway is not adversely affected by traffic arising from the development in accordance with Policies LP1 and T3 of the Luton Local Plan and the National Planning Policy Framework.*
- 26 The extensions to the passenger terminal hereby permitted shall not be brought into use for passengers unless and until either the approved highway improvement schemes referred to in Condition 25 have been carried out and completed by the applicant in accordance with the approved details or the applicant's obligations have fallen due under the agreement referred to in Condition 25 have been fully complied with.
- 26 *Reason: To ensure that the public highway is not adversely affected by traffic arising from the development in accordance with Policies LP1 and T3 of the Luton Local Plan and the National Planning Policy Framework.*
- 27 The development shall be carried out in accordance with the Renewable Energy Strategy approved on 23 September 2015 (ref: 15/00734/DOC).
- 27 *Reason: In the interests of sustainability and to reduce adverse environmental and energy impacts of the development. To accord with the objectives of Policy (ies) LP1, ENV9 and U3 of the Luton Local Plan and the National Planning Policy Framework.*
- 28 The development hereby permitted shall not be carried out other than in complete accordance with the approved plans and specifications as set out in the schedule of documents and the Environmental Statement contained in the Terence O'Rourke letters dated 30th November and 14th December 2012 submitted with application 12/01400/FUL and with the following documents:



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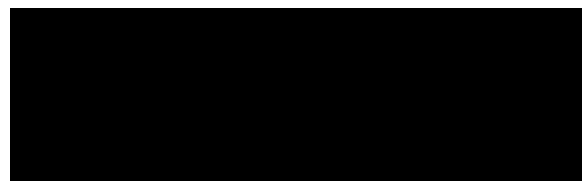
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- Noise Impact Assessment, Bickerdike Allen Partners dated 15 May 2015;
- Contour Methodology Update, Bickerdike Allen Partners dated 14 August 2015;
- Environmental Statement Addendum, Terence O'Rourke dated July 2015

28 *Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policy(ies) LP1, LLA1, ENV9, ENV10, T3, T6, T8 of the Luton Local Plan.*

INFORMATIVES:-

- (1) This Notice forms only part of the planning decision and must be read in conjunction with the attached Section 106 Agreement or Unilateral Agreement.



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The plans/documents which are the subject of this decision can be viewed on the on-line planning system at www.eplan.luton.gov.uk by entering 15/00950/VARCON into the application search. Please note that the numbers given here are used so that the Document number and number on the decision notice are compatible. They are not the plan numbers on the drawings themselves used by the Applicant/Agent. The documents are viewable on the "Documents" tab and comprise the following Luton Borough Council numbers:-

PLAN NUMBERS AS SET OUT IN THE CONDITIONS ABOVE

NOTES

1.1 If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990 within 6 months of the date of this notice or for certain applications from 01.10.13, within the following timescales:-

- a) within 28 days of the date of this notice for a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice [see reference above]
- b) within 28 days of the date of service of the enforcement notice, or within 6 months [12 weeks in the case of a householder appeal] of the date of this notice, whichever period expires earlier if an enforcement notice is served relating to the same or substantially the same land and development as in your application
- c) within 12 weeks of the date of this notice for a decision to refuse planning permission for a householder application or for a minor commercial application
- d) within 8 weeks of the date of receipt of this notice for a decision to refuse express consent for the display of an advertisement

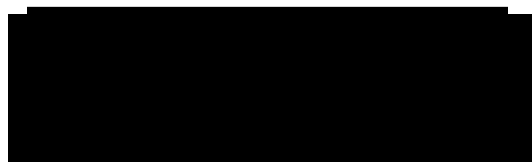
If you want to appeal against your local planning authority's decision then you must do so.

Appeals must be made using a form which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN or online at www.planningportal.gov.uk/pcs.

The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

1.2 If permission to develop land is refused or granted subject to conditions, whether by



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the Local Planning Authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted he/she may serve on the Common Council, or on the Council of the District in which the land is situated as the case may be, a purchase notice requiring that Council to purchase his/her interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

1.3 In certain circumstances, a claim may be made against the Local Planning Authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him/her. The circumstances in which such compensation is payable are set out in section 114 of the Town and Country Planning Act 1990.

2. Where this notice conveys the grant of planning permission, approval of reserved matters or discharge of condition(s):-

If the development involves the carrying out of works:-

- (i) for the demolition of a building listed under Section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990, as a building of special architectural or historic interest, or for its extension or alteration, or
- (ii) for the demolition of a building which is within a Conservation Area designated under Section 69 of the Act,

The work may not be carried out without Listed Building Consent under Part 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 or Conservation Area Consent under Part 11 of the Act. A separate application must be made for this purpose.

Exceptions:

- (i) an excepted building within the meaning of Section 60 of the Act, or
- (ii) a building exempt by direction of the Secretary of State.

Any person who fails to comply with the above provisions is committing an offence and may be prosecuted.

3. This permission or approval does not exempt you from complying with Building Regulations and General Statutory Provisions in force in the District


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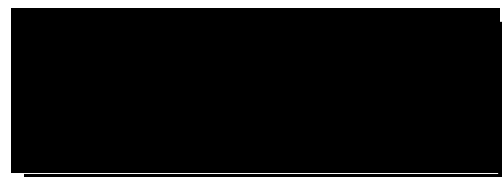
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and in particular does not override any public right of way which may exist.

4. The LPA takes a positive and proactive approach to development proposals with the aim of delivering quality outcomes to the benefit of the applicant, the Council and the community at large by providing access to development plan policies, offering a pre-application advice service and where practicable and appropriate through engagement with applicants/agents during the application process in accordance with the requirements of paras.186 and 187 of the National Planning Policy Framework and the Town and Country Planning (Development Management Procedure) (England) Order 2010 Article 31 (as amended) and having regard to the policies of the development plan and other material considerations. In this instance the LPA has worked in a positive way by assessing the application in a prompt and reasonable manner to achieve an acceptable outcome subject to the imposition of appropriate conditions and for the reasons stated above and as set out in the Case Officers report.



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