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London Luton Airport Expansion

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8.57 Applicant's Response to Supplementary Agenda Additional Questions - Compulsory Acquisition Hearing 1 (CAH1)

Infrastructure Planning (Examination Procedure) Rules 2010

Application Document Ref: TR020001/APP/8.57

The Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

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

**8.57 APPLICANT'S RESPONSE TO SUPPLEMENTARY AGENDA
QUESTIONS – COMPULSORY ACQUISITION HEARING 1 (CAH1)**

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1 INTRODUCTION

1.1 Purpose of this document

- 1.1.1 This document sets out Luton Rising's (a trading name of London Luton Airport Limited) ('the Applicant') response to the additional questions issued by the Examining Authority (ExA) by way of the supplementary agenda for Compulsory Acquisition Hearing 1 (CAH1), published on 19 September 2023.

2 APPLICANT'S RESPONSE TO ADDITIONAL QUESTIONS RELATING TO CAH1

Table 2.1: Responses to additional questions issued by the ExA in relation to CAH1

Reference Number	Subject	Question	Applicant's Response
ARTICLES			
CAH.A.01	Clarification	Article 25 (a) Explain why it is necessary to not incorporate paragraph 8(3).	<p>This exclusion is provided for in the Model Provisions (article 19) and the majority of made transport DCOs to date. Paragraph 8(3) of Schedule 2 to the Acquisition of Land Act 1981 states that:</p> <p><i>“If the owner of the mines refuses to allow a person appointed by the acquiring authority for the purpose to enter the mines or works under this paragraph he shall be liable on summary conviction to a sum not exceeding [level 2 on the standard scale].”</i></p> <p>Exclusion of this provision avoids the DCO incorporating the offence referred to above.</p>
CAH.A.02	Drafting	Article 26 (1) (a) For precision should the words in bold be added to the drafting: (a) No notice to treat is to be served under Part 1 (compulsory purchase under the acquisition of Land Act 1981) of the 1965 Act	The Applicant agrees and has made these changes to the draft DCO submitted at Deadline 3.
CAH.A.03	Drafting	Article 27 (1) For precision should the wording in bold be added? 'Subject to paragraph (2) and (4), the undertaker may acquire such rights over the Order land, or impose such	The Applicant agrees and has made these changes to the draft DCO submitted at Deadline 3.

Reference Number	Subject	Question	Applicant's Response
		restrictive covenants affecting the Order land...'	
CAH.A.04	Drafting	<p>Article 28 (1) For precision should the drafting be amended as follows: 'Subject to the provisions of this article, all private rights and restrictions over land subject to compulsory acquisition under Article 24 are extinguished –'</p>	<p>The Applicant agrees that the addition of '<i>and restrictions</i>' adds clarity to the drafting and has made this change to the draft DCO submitted at Deadline 3.</p> <p>With regards to the suggested inclusion of reference to '<i>Article 24</i>' conventionally '<i>Order</i>' is used in drafting and the Applicant is concerned that narrowing this reference down might have unforeseen consequences and so the Applicant has not made this change to the draft DCO submitted at Deadline 3.</p>
CAH.A.05	Drafting	<p>Article 28 (1) (a) Does the drafting need to be expanded to include agreement through the grant of a lease of the land ie: 'As from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement or through the grant of a lease of the land by agreement; or</p>	<p>The Applicant is not aware of this precedent being used elsewhere.</p> <p>As a preliminary point, the Applicant notes (by way of relevant legal context) that the compulsory purchase powers in a DCO do not provide for the compulsory creation of a lease.</p> <p>The Applicant would query if it would be acceptable as a matter of law for an agreement for a lease to have the effect of extinguishing existing rights. Ordinarily any lease would have to address the interface with existing rights via its terms. The Applicant is not aware of any scenario under this DCO where land is required permanently (as opposed to Temporary</p>

Reference Number	Subject	Question	Applicant's Response
			<p>possession) and is suitable for a time limited lease arrangement.</p> <p>In light of the above comments the Applicant has not made this change to the draft DCO submitted at Deadline 3.</p>
CAH.A.06	Drafting	<p>Article 28 (3) and (4) Does the drafting need to be expanded to include restrictions as well as private rights?</p>	<p>The Applicant agrees that the drafting should be expanded as suggested and has made this change to the draft DCO submitted at Deadline 3.</p>
CAH.A.07	Drafting	<p>Article 28 (3) Does this need to be expanded to include land that is vested in or acquired by the undertaker? And should it include a requirement for the undertaker to serve notice regarding extinguishment? 'Subject to the provisions of this article, all private rights over land owned by, vested in or acquired by the undertaker that are within the Order land are extinguished at the start of any activity authorised by this Order which interferes with or breaches those rights and where the undertaker gives notice of such extinguishment.'</p>	<p>The Applicant considers that the drafting of this article is well preceded. The Applicant is not aware of: (a) a "made" DCO which contains this proposed form of drafting; or (b) the preceded wording causing any problems during the implementation of the DCO project. The Applicant notes that the remainder of article 28 contains provisions for the benefit of affected parties, including compensation.</p> <p>Rights over land to be acquired by the undertaker under the Order is addressed by article 28(1).</p> <p>Accordingly the Applicant's position is that it is not necessary to make the requested change to the draft DCO submitted at Deadline 3.</p>
CAH.A.08	Drafting	<p>Article 28 (4) As currently drafted all private rights would be extinguished</p>	<p>The Applicant notes that the drafting of this article is well preceded, and considers that it is reasonable, necessary and</p>

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		<p>for as long as the undertaker remains in lawful possession of the land during temporary possession is this reasonable and necessary? Could this be addressed by the insertion of the drafting in bold: 'Subject to the provisions of this article, all private rights over land for which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.'</p>	<p>appropriate. The Applicant would need to ensure the ability to take exclusive possession of land required temporarily (e.g. for construction) and so this would not be compatible with the Examining Authority's proposed wording, which could lead to disputes over whether "continuance would be inconsistent with the purpose for which temporary possession is taken". Clearly it would remain open to the undertaker to reach agreement with an affected party, as an alternative to paying compensation.</p> <p>Accordingly the Applicant's position is that it is not necessary to make the requested change to the draft DCO submitted at Deadline 3.</p>
CAH.A.09	Drafting	<p>Article 28 (7) and (8) For precision should:</p> <ol style="list-style-type: none"> 1. The word 'it' be replaced with 'land' in (a) (ii), (iii) and (iv). 2. 'and' be replaced with 'or' at the end of (a). 3. 'it' be replaced with 'the agreement' in the sentence at the end of (8) (b). 	<ol style="list-style-type: none"> 1. The Applicant agrees with the suggested changes and has made these changes to the draft DCO submitted at Deadline 3. 2. The word "and" appears in made DCOs and the Applicant considers that article 28(7)(a) and (b) are not necessarily and either / or, so this change has not been made. 3. The Applicant has made the change suggested by the Examining Authority.
CAH.A.10	Drafting	<p>Article 29 (1) For precision should the title of Part 1 of the Act be quoted in full eg (1) Part 1 (compulsory purchase under Acquisition</p>	<p>The Applicant has followed precedent but is content to make this change to the draft DCO submitted at Deadline 3.</p>

Reference Number	Subject	Question	Applicant's Response
		of Land Act of 1946) of the 1965 Act	
CAH.A.11	Drafting	Article 30 (8) (b) Please confirm whether the reference to section 4 should be a reference to section 5A and amend accordingly	The Applicant agrees that the incorrect reference was used and has made this change to the draft DCO submitted at Deadline 3.
CAH.A.12	Drafting	Article 31 (1) Please confirm whether a reference to article 27 (compulsory acquisition of rights and imposition of restrictive covenants) should also be included in the drafting. Please amend accordingly	The Applicant does not agree that reference to article 27 should also be included here. This provision is specific to land identified for outright opposition and provides for a reduced form of acquisition over that land. This includes the acquisition of rights only.
CAH.A.13	Drafting	Article 33 (1) Please review the list and ensure that all activities that would need the temporary possession of land are included eg mitigation works	The Applicant considers that all of the listed activities are relevant and necessary for this project. The drafting of this article is well precedented.
CAH.A.14	Drafting	Article 35 (4) The definition for special category land does not refer to common land, should it and if so please amend accordingly	The authorised development does not affect any common land and therefore this does not need to be included here.
CAH.A.15	Drafting	Article 36 (1) Is it necessary to include a reference to article 27 or is a reference to Schedule 8 sufficient? In (c) for precision does the wording in bold need to be inserted? 'extinguish or suspend the rights of, or restrictions for the benefit of, or remove, relocate or reposition apparatus belonging to statutory undertakers over or within the Order land.	The Applicant considers it necessary to reference to article 27, since article 27(3) contains provisions relevant to statutory undertakers. The Applicant agrees with the suggested change proposed for (c) and has made these changes to the draft DCO submitted at Deadline 3.

Reference Number	Subject	Question	Applicant's Response
CAH.A.16	Drafting	Article 38 (3) For precision should the title of Part 3 of the Act be quoted in full eg Part 3 (street works in England and Wales) of the 1991 Act applies.	The Applicant has followed precedent but is content to make this change to the draft DCO submitted at Deadline 3.
CAH.A.17	Drafting	Article 39 (1) Does lessee need to be referenced: 'Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any lessee or licensee to take, use, enter upon or in any manner interfere with any land or rights of any description'	The Applicant agrees that, for the avoidance of doubt, lessee should be referenced and has made this change to the draft DCO submitted at Deadline 3.
SCHEDULE 6			
CAH.S6.01	Drafting	2 (2) For precision should the title of Section 7 be quoted in full eg section 7 (measure of compensation in case of severance) of the 1965 Act applies. And For precision should the wording in bold be inserted: (a) For "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on "	The Applicant has followed precedent but is content to make this change to the draft DCO submitted at Deadline 3. The Applicant has made the change suggested for sub-paragraph (a).
CAH.S6.02	Drafting and clarification	3(2) (a) and (b) For precision should Section 11(1) be quoted in full and does the end of the sentence need to refer to modification by paragraph 7 of Schedule 7? '(a) the acquiring authority enters on land for the purpose	The Applicant has followed precedent but, for clarity, is content to make these changes which have been included in the draft DCO submitted at Deadline 3.

Reference Number	Subject	Question	Applicant's Response
		<p>of exercising a right in pursuance of a notice of entry under section 11 (1) (powers of entry) of the 1965 Act (as modified by paragraph 7 of Schedule 7 to the London Luton Airport Expansion Project Development Consent Order 202[])</p> <p>Clarify if (b) should refer to paragraph 12 of Schedule 2A of the 1965 Act rather than paragraph 13.</p>	<p>The Applicant agrees that the reference should be to paragraph 12 rather than paragraph 13 and has made this change to the draft DCO submitted at Deadline 3.</p>
CAH.S6.03	Drafting	<p>For precision should the title above paragraph 4 read 'Application of Part 1 of the 1965 Act'.</p>	<p>The Applicant has followed precedent but, for clarity, is content to make this change which has been included in the draft DCO submitted at Deadline 3.</p>
CAH.S6.04	Drafting	<p>Schedule 2a (1)</p> <p>For precision does this drafting need to include a reference to the Order? Eg '....as applied by article 30 (application of the 1981 Act and modification of the 2017 Regulations) of the London Luton Airport Expansion Project Development Consent Order 202[] in respect of the land to which the notice relates</p>	<p>The Applicant has followed precedent but, for clarity, is content to make this change which has been included in the draft DCO submitted at Deadline 3.</p>