

October 2023

London Luton Airport Expansion

Planning Inspectorate Scheme Ref: TR020001

Volume 8 Additional Submissions (Examination)

8.65 Applicant's Deadline 3 Updates to Comments in Written Representations and Local Impact Reports on Draft DCO Drafting

Infrastructure Planning (Examination Procedure) Rules 2010

Application Document Ref: TR020001/APP/8.65

The Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

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

**8.65 APPLICANT'S DEADLINE 3 UPDATES TO COMMENTS IN
WRITTEN REPRESENTATIONS AND LOCAL IMPACT REPORTS ON
DRAFT DCO DRAFTING**

Deadline:	Deadline 3
Planning Inspectorate Scheme Reference:	TR020001
Document Reference:	TR020001/APP/8.65
Author:	Luton Rising

Version	Date	Status of Version
Issue 1	October 2023	Additional Submission - Deadline 3

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1 INTRODUCTION

1.1 Purpose of this document

- 1.1.1 This document sets out updates from Luton Rising (a trading name of London Luton Airport Limited) ('the Applicant') to comments received from Interested Parties on the draft Development Consent Order ('dDCO') in Written Representations ('WRs') and Local Impact Reports ('LIRs').
- 1.1.2 The Applicant responded to the WRs and LIRs initially at Deadlines 2 and 2A, but following subsequent review is able to provide updates on a select number of matters.
- 1.1.3 This document does not contain any comments on LIR or WR matters that were substantively responded to by the Applicant at Deadline 2 / 2A, nor on matters which the Applicant continues to keep under review at the point of Deadline 3.

2 LUTON BOROUGH COUNCIL

Table 2.1: Responses to Luton Borough Council's WR and LIR comments on the dDCO

dDCO Provision	IP's Ref.	Interested Party's Comment	Applicant's Deadline 3 Response
Schedule 2	LIR 4.15.5	There is reference throughout the requirements to 'parts' of the development, however, 'part' is not defined in the interpretation, and therefore it is not clear whether this relates to individual elements (such as those set out in the parameters table in requirement 6), or a phase, or some other component of the Proposed Development. This needs to be clarified and defined.	<p>'Part' is defined by paragraph 2(2) of Schedule 2, as follows:</p> <p><i>"References in this Schedule to part of the authorised development are to be construed as references to stages, phases or elements of the authorised development in respect of which an application is made by the undertaker under this Schedule, and references to commencement of part of the authorised development in this Schedule are to be construed accordingly."</i></p> <p>The use of the term "part" is heavily precedented and has been endorsed by the Secretary of State in "made" DCOs. It is intended to allow for a DCO to be implemented (and requirements to be discharged) in discrete parts / elements, rather than implementing the authorised development as a whole.</p>
Requirement 1	LIR 4.15.6	When defining passengers, the term 'infant' is used, however, there is no definition as to the age group that is covered by this term. 'Infant' has differing interpretations and, therefore, it should be made clear what is meant given that this directly impacts the cap on the number of	The definition of "infant" means a person under the age of two years, and is taken from the CAA's definition. This has been added as a definition to paragraph 1 of Schedule 2 in the Deadline 3 version of the Draft DCO.

dDCO Provision	IP's Ref.	Interested Party's Comment	Applicant's Deadline 3 Response
		passengers per annum, since infants are not counted towards that cap (this also differs from the recounting of passenger numbers published by the CAA).	
Requirement 7	LIR 4.15.8	Requirement 7 provides that no part of the development can commence until written notice (14 days) of the works comprising that part have been given to the relevant planning authority. The LPA would need to understand what is meant by 'part' in order to be able to comment as to whether that written notice period is sufficient.	See the response to LIR 4.15.5 above.
Requirement 8	LIR 4.15.9	Requirement 8 deals with the Code of Construction Practice (CoCP), however, states that the CoCP should only be substantially complied with. This flexibility is considered to be inappropriate given that this is a certified document and that the potential implications of non-compliance could be significant. There is also reference to 'the contractor' developing individual management plans, which is not defined within the interpretations and gives no assurances as to the competence of the person(s) charged with developing these plans.	In the Deadline 3 version of the dDCO, the Applicant has amended Requirement 8 so that the phrase "in accordance with" has been applied in relation to the CoCP, since it is not an outline document. The drafting has also been revised to remove reference to "contractor", so that it is clear that the primary obligation falls upon the "undertaker".

3 CENTRAL BEDFORDSHIRE COUNCIL

Table 3.1: Responses to Central Bedfordshire Council's WR and LIR comments on the dDCO

dDCO Provision	Ref.	Interested Party's Comment	Applicant's Deadline 3 Response
Work No. 5e	LIR 7.2	Schedule 1 details the work to be undertaken and Work No. 5e relates to offsite hedgerow restoration and screening. This would be applicable to the works proposed adjacent to Hyde footpath No. 4 and 5, and bridleway 3. The draft DCO specifies that this includes soft landscaping and erection of boundary treatments including fencing. However, the Work Plan Landscaping and Mitigation Works Scheme Layout do not provide any detail such as cross sections, boundary treatment, extent of planting to enable an assessment of the impact these works on the function of the public rights of way network and the rural landscape character of the area. There are no requirements that secure this information prior to commencement of offsite hedgerow restoration and this information needs to be secured through the DCO.	<p>Information on hedgerow planting is included in the Strategic Landscape Masterplan [APP-172] and the Outline Landscape and Biodiversity Management Plan [AS-029]. The Applicant is happy to engage further with the Council about the specific proposals for Work No. 5e.</p> <p>To the extent that these works (or part of them) are in Central Bedfordshire's administrative area, it would be the "relevant planning authority" for those works. The Applicant highlights that the pre-commencement approvals required from the Council under Requirement 5 (detailed design), Requirement 9 (landscaping design) and Requirement 10 (landscape and biodiversity management plan) would secure the type of information referred to by the Council.</p>
Requirement 7	LIR 7.6	Requirement 7 provides that no part of the development can commence until written notice (14 days) of the works comprising that part have been given to the relevant planning authority. It is considered that the notice period should be extended to 21 days and further clarity is required on what is meant by 'part'.	The Applicant maintains its position that 14 days is a reasonable notice period for the commencement of works. It should be noted that, prior to providing this notice, the Applicant would still need to have obtained the various other pre-commencement approvals for those works as set out in Schedule 2 – which would have considerably longer lead-in times than 14 days.

dDCO Provision	Ref.	Interested Party's Comment	Applicant's Deadline 3 Response
			<p>Following discussions at Issue Specific Hearing (ISH) 1 and ISH6, the Applicant is considering further amendments to Requirement 7 and will provide an update at Deadline 4.</p> <p>'Part' is defined by paragraph 2(2) of Schedule 2, as follows:</p> <p><i>"References in this Schedule to part of the authorised development are to be construed as references to stages, phases or elements of the authorised development in respect of which an application is made by the undertaker under this Schedule, and references to commencement of part of the authorised development in this Schedule are to be construed accordingly."</i></p> <p>The use of the term "part" is heavily precedent, and has been endorsed by the Secretary of State in "made" DCOs. It is intended to allow for a DCO to be implemented (and requirements to be discharged) in discrete parts / elements, rather than implementing the authorised development as a whole.</p>
Requirement 8	LIR 7.7	Whilst it is welcomed that the Code of Construction Practice would be secured by Requirement 8, there is concern regarding the drafting of the requirement. The applicant is only required to construct the development 'substantially in accordance' with the code of	In the Deadline 3 version of the dDCO, the Applicant has amended Requirement 8 so that the phrase "in accordance with" has been applied in relation to the CoCP, since it is not an outline document. The drafting has also been revised to remove reference to

dDCO Provision	Ref.	Interested Party's Comment	Applicant's Deadline 3 Response
		<p>construction practice, which gives flexibility. However, as the Code of Construction Practice is a certified document it should be complied with completely. Additionally, the wording includes reference to 'the contractor' developing management plans, a point raised in the Air Quality section of this report. There is no clear definition, and it is suggested that this is removed to avoid confusion.</p>	<p>"contractor", so that it is clear that the primary obligation falls upon the "undertaker".</p>
<p>General</p>	<p>LIR 7.15</p>	<p>Para 23: Surface access – refers to a Framework Travel Plan, which is also referred to within para 16: Interpretation but is not referenced elsewhere in the document. This appears to be an error as para 16: interpretation states that the Framework Travel Plan is referenced in Schedule 8 as a certifiable document. Considering the importance of the plan to the overall surface access strategy, the DCO should include details of the process for agreement, implementing, and reviewing the document.</p>	<p>As noted at Deadline 2A, the Applicant is unclear as to the references cited here. The Framework Travel Plan [AS-131] is secured by the process set out in Requirement 30, defined in Requirement 1 and will be certified in accordance with article 50 and Schedule 9 in which it is listed.</p>

4 HERTFORDSHIRE LOCAL AUTHORITIES

Table 4.1: Responses to the Hertfordshire Local Authorities' WR and LIR comments on the dDCO

dDCO Provision	Ref.	Interested Party's Comment	Applicant's Deadline 3 Response
Requirement 5	LIR 9.1.28– 9.1.30	<p>The Councils welcome the ability to approve the details of the layout, siting, scale and external appearance of the buildings, structures and other works that form the Development, but note that such details must be in 'general accordance' with the Design Principles [APP-225]. There are two points to note in this regard: the Councils are still reviewing the Design Principles to ensure it is fit for purpose, so are not in a position to confirm its acceptable at the current time; and the reference to 'in general accordance' appears a weak way to secure the document, as this indicates there could be a substantial departure from them – they should either be secured or not. The Councils consider that the word 'general' should be deleted.</p>	<p>Noting the Hertfordshire Local Authorities' comments, the Applicant has amended the dDCO submitted at Deadline 3 such that in Requirement 5 the phrase "in general accordance with" has been replaced with "in accordance with" the design principles.</p>
Requirement 7	LIR 9.1.31	<p>The Councils require more than 14 days' notice of the commencement of the development. In addition, they also require notice of when any works authorised by the DCO are begun. The Councils will discuss this in more detail with the Applicant.</p>	<p>The Applicant maintains its position that 14 days is a reasonable notice period for the commencement of works. It should be noted that, prior to providing this notice, the Applicant would still need to have obtained the various other pre-commencement approvals for those works as set out in Schedule 2 – which would have considerably longer lead-in times than 14 days.</p>

dDCO Provision	Ref.	Interested Party's Comment	Applicant's Deadline 3 Response
			Following discussions at ISH1 and ISH6, the Applicant is considering further amendments to Requirement 7 and will provide an update at Deadline 4.
Requirement 8	LIR 9.1.32– 9.1.34	<p>Requirement 8 (Code of Construction Practice) – The Code of Construction Practice (CoCP) is a key construction works control document. The Councils have commented on the substance of this document (and the subsidiary outline plans) elsewhere, but wish to comment on the wording of the requirement itself as follows:</p> <p>Requirement 8(1) only requires the Development to be carried out 'substantially in accordance' with the CoCP and its subsidiary plans – it is the Councils' view that this wording allows too much latitude for the Applicant to depart from measures within the CoCP. Ultimately, the CoCP measures should either be fully secured or not. The Councils require that the word 'substantially' is deleted.</p> <p>There is reference in Requirement 8(2) to 'the contractor' – this does not appear to be a defined term and the Councils query whether this should instead refer to 'the undertaker'.</p>	In the Deadline 3 version of the dDCO, the Applicant has amended Requirement 8 so that the phrase "in accordance with" has been applied in relation to the CoCP, since it is not an outline document. The drafting has also been revised to remove reference to "contractor", so that it is clear that the primary obligation falls upon the "undertaker".
Requirement 9	LIR 9.1.35	The Councils query whether it is appropriate for the details to only 'reflect' that strategic document, rather than be 'substantially in	In the Deadline 3 version of the dDCO, the Applicant has amended Requirement 9 to replace "reflect" with "in accordance with".

dDCO Provision	Ref.	Interested Party's Comment	Applicant's Deadline 3 Response
		accordance with...', which would be consistent with drafting elsewhere in the DCO.	
Requirement 13	LIR 9.1.38	Requirement 13 (Surface and Foul Water Drainage) - The Councils are currently considering the adequacy of the surface and foul water drainage plan and have commented on that elsewhere - the efficacy of this requirement rests on that. Otherwise, the DCO drafting appears appropriately enforceable, although it is noted "the surface and foul water drainage plan" is not currently a defined term in Requirement 1, so should be added.	<p>The "surface and foul water drainage plan" does not currently exist but will, when developed in the post-consent phase, need to be in accordance with the principles of the Drainage Design Statement [APP-137], which is defined and will be certified.</p> <p>The Applicant has replaced "the" with "a" in Requirement 13(1) to make the provision clearer in this respect.</p>
Requirement 26	LIR 9.1.66	The Councils note the proposed overall cap of 32 million passengers per annum which they do not object to in principle. However, the key point relates to the comments above, in respect of whether the GCG Framework is an appropriate mechanism to control growth within that overall cap. In addition, the Councils query the reference to the 'airport comprised in the authorised development' that is subject to the cap – given the definition of 'authorised development' (i.e. new development) clarification is required on the treatment of existing development. Indeed, this formulation is different to that in Requirement 27 (which just refers to the airport) – it is not clear if this is intentional. Further engagement with the Applicant is required.	Having had regard to the Council's comments, the Applicant is no longer employing the phrase "airport comprised in the authorised development". Instead, this requirement will apply the passenger cap to the operation of the "airport" under the Order. This wording is now consistent with Requirement 27.

dDCO Provision	Ref.	Interested Party's Comment	Applicant's Deadline 3 Response
Requirement 35	LIR 9.1.76	The Councils welcome the ability for the parties to agree a longer period for a discharge decision, although they query whether the drafting in Requirement 35(1)(c) is strictly correct (i.e. it doesn't appear to follow on from the preceding wording and paragraphs (a) and (b))	In the Deadline 3 version of the dDCO, the Applicant has made drafting amendments to Requirements 34 and 35 to address the comment from the Councils on 35(1)(c).

5 BUCKINGHAMSHIRE COUNCIL

Table 5.1: Responses to Buckinghamshire Council's WR and LIR comments on the dDCO

dDCO Provision	Ref.	Interested Party's Comment	Applicant's Deadline 3 Response
Requirement 9	LIR 3.11.2	<p>Suggested changes: Implementation Trigger required.</p> <p>Comments: Landscaping to be carried out prior to first use of the development. Please see Section 2.10 of Written Representations.</p>	<p>In common with well-precedented DCO practice, and drafting endorsed by the Secretary of State, Schedule 2 to the dDCO permits works to be implemented in discrete "parts". On this basis, Requirement 9 provides for prior approval of a landscaping scheme in relation to the "part" being taken forward, prior to that "part" of the authorised development commencing.</p>
Requirement 10	LIR 3.11.2	<p>Suggested changes: Implementation Trigger required.</p> <p>Comments: To be carried out prior to construction / occupation, whichever is most appropriate.</p>	<p>In common with well-precedented DCO practice, and drafting endorsed by the Secretary of State, Schedule 2 to the dDCO permits works to be implemented in discrete "parts". On this basis, Requirement 10 provides for prior approval of a landscape and biodiversity management plan in relation to the "part" being taken forward, prior to that "part" of the authorised development commencing.</p>

6 AFFINITY WATER

Table 6.1: Responses to Affinity Water's WR comments on the dDCO

dDCO Provision	Ref.	Interested Party's Comment	Applicant's Deadline 3 Response
Requirements 12 and 13		Affinity Water seeks some form of commitment from the Applicant that engagement will be undertaken on contamination in paragraph 12, surface and foul water drainage in paragraph 13 (which is particularly critical, given it is understood this will set the performance standards of the water treatment plant mentioned above) and remediation in paragraph 17, prior to any formal submissions being made by the Applicant under these requirements.	<p>In relation to paragraph 12 of Schedule, the Applicant has followed well-precedented DCO drafting and considers that this matter can be competently addressed by the local planning authority, in consultation with the Environment Agency.</p> <p>In relation to requirement 13, in the Deadline 3 version of the dDCO the Applicant has extended the consultation obligation to the "relevant sewerage undertaker", but understands that Affinity Water is not a sewerage undertaker for the area concerned.</p>

7 HARPENDEN SOCIETY

Table 6.1: Responses to Harpenden Society's WR comments on the dDCO

dDCO Provision	IP's Ref.	Interested Party's Comment	Applicant's Deadline 3 Response
Article 8	Paras 4-9	<p>4. The application proposes that Phase 1 occurs during the existing concession which ends in 2032.</p> <p>5. The Funding Statement in paragraph 4.3.1 refers to LR operating the airport post the existing concession "with the TUPE transfer of current operational staff" together with the "benefit from the provision of a Technical Services Agreement (TSA) with an aviation expert with global expertise to provide ongoing comprehensive technical and management support for a period of time" or a (new) concessionaire being appointed (which could be the existing concessionaire).</p> <p>6. LR are proposing to exclude the need for the Secretary of State's consent to the transfer of the benefit of the order post concession under 8(4)(b) of the DCO where the transfer is to an "airport operator" defined in the DCO as "the managing body of London Luton Airport as defined in the Airports Slot Allocation Regulations 2006(j)" (we do not recognise this provision in those regulations and believe it is meant to refer, ultimately, to Council Regulation (EEC) No95/93 Article 2(j)).</p>	<p>These matters were initially responded to in the Applicant's response to Written Representations made by Non-statutory Organisations at Deadline 1 (Part 4) [REP2-037]. A further, updated response is set out below.</p> <p>In relation to point 6 – the Airports Slot Allocation Regulations 2006, at regulation 2, contains a definition of "managing body of an airport" which adopts the meaning given in Article 2(j) of the Council Regulation (EEC) No. 95/93.</p> <p>In relation to points 7 and 8 – the Applicant agrees that the Airports Act 1986 (the Act) essentially removes the ability of <i>local authorities</i> directly to manage and operate airports. Section 17(1) of the Act concerns the qualification / experience of directors of <i>public airport companies</i> (such as Luton Rising) to operate an airport. However, where the public airport company has made other arrangements to operate the airport, the Secretary of State can direct that section 17(1) does not apply.</p> <p>The responsibility for operating and managing the airport currently sits entirely LLAOL under a concession agreement. The Secretary of State has duly directed</p>

	<p>7. The exclusion of the Secretary of State's consent will leave it up to LR to decide if it is capable of undertaking the development of the airport or to appoint a new airport operator.</p> <p>8. LR is, under existing UK law, incapable of being an airport operator after the current concession ends as it does not meet the requirements of The Airports Act 1986 ("AA 1986"), specifically section 17(1) or Council Regulation (EEC) No 95/93 Article 2(j) to be, respectively, a "controlling authority of a public airport company" or a "managing body of an airport". The throwaway statements in the Funding Statement that LR will undertake the development with the TUPE transfer of existing staff and an as yet undefined relationship with an unknown aviation expert are, firstly, so vague as to be meaningless, and, secondly, no guarantee that either of these proposals will come to fruition or will be sufficient to ensure the controlling authority or managing body contains individuals with sufficient experience to manage such an undertaking. We do not believe that the Board of LR, as presented constituted, has the experience to appoint a new airport operator either or that, without overriding scrutiny of the relationship between LR and a new airport operator, that such a relationship will be free from LR's interference.</p> <p>9. If LR, or any other airport operator, appointed by LR, is to undertake the future development of the airport it is essential that the Secretary of State is satisfied that either route has in place people with</p>	<p>section 17(1) does not apply to the Applicant, by extension confirming satisfaction with the current arrangements that LLAOL can operate the airport and that the Applicant is able to appoint a new airport operator if required.</p> <p>Any future arrangement that departed from the current concession-based arrangement would clearly need to demonstrate compliance with section 17 of the Act.</p> <p>In relation to point 9 – the Applicant does not agree that any transfer of benefit to a future operator under article 8 of the Draft DCO should require Secretary of State approval. The Applicant has set out the position as regards section 17 of the Act above. In addition, it should be noted that airport operations are subject to separate regulation by the CAA.</p>
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		<p>the relevant experience to undertake airport development and management. Clause [article] 8 of the DCO should be amended accordingly.</p>	
<p>Article 26</p>	<p>Paras 10-12</p>	<p>LR is proposing in section [article] 26(1) of the DCO that the time limit for the exercise of authority to acquire land compulsorily extend to 10 years, a very significant extension to the statutory time limit of 5 years.</p> <p>LR has provided no credible reason why it needs 10 years to exercise this authority. Any legal challenges won't run for 5 years. The existence of precedents (paragraph 3.94 of the Explanatory Memorandum) is only relevant if the reason for the extension of time is relevant to LR's situation. The reasons given in paragraphs 3.95 and 3.96 don't make sense – it's still the same land that needs acquiring. Planning permissions are meant to give all statutory, business and residential constituencies certainty to plan their futures. A 10 year exercise period will leave everyone in a state of limbo for too long and, decisions about other development in those constituencies are likely to be deferred or, if they can't be delayed, be suboptimal.</p> <p>In the absence of credible reasons why LR requires a 10 year period to exercise its authority to acquire land compulsorily, the period of exercise should be limited to the statutory period of 5 years.</p>	<p>This comment was responded to in the Applicant's response to Written Representations made by Non-statutory Organisations at Deadline 1 (Part 4) [REP2-037].</p> <p>For ease of reference, the Applicant's response was that its reasons for seeking a 10 year compulsory acquisition period are set out in full at paragraphs 9.8.5 to 9.8.16 of the Statement of Reasons [AS-071].</p>