

**Application by Luton Rising Limited for an Order granting Development Consent for the expansion of London Luton Airport**

**Written representations submitted on behalf of Network Rail Infrastructure Limited**

**Planning Inspectorate Reference Number: TR020001  
Reference Number: LUTN-ISP001**

## 1. Introduction

1.1 This written representation is submitted on behalf of Network Rail Infrastructure Limited (**Network Rail**) in response to the application by Luton Rising Limited (**Luton Rising**) for the London Luton Airport Expansion DCO (the **DCO**).

1.2 The Book of Reference identifies 17 Plots which impact Network Rail as:

1.2.1 The Owner and/or Occupier of the following plots:

1-21	1-32 (Owner (in respect of subsoil up to half width of highway))
1-25	1-36
1-26	1-41
1-27	

1.2.2 Having rights over the following plots:

1-15	1-34
1-22	1-38
1-25a	1-42
1-31	1-44
1-33	1-47

1.3 Network Rail reserves the right to submit further representation relating to any other plot within the DCO order limits where it is found that Network Rail have an interest or asset(s).

1.4 The DCO includes the power to:

- a) compulsory acquire all interest and rights (as defined in the Book of Reference);
- b) extinguish any existing rights belonging to Network Rail; and
- c) acquire temporary possession.

1.5 The proposals may also indirectly impact Network Rail infrastructure, such as bridges, level crossings and drainage. In addition, the DCO if granted will provide consent to increase the capacity of the airport to 32 million passengers per annum. This is a considerable increase, especially if Luton Rising's assumption that 45% of the journeys to the airport will be made by public transport by 2039<sup>1</sup> is correct. The proposals are therefore likely to also impact the capacity at Luton Airport Parkway station (the extent yet to be determined).

1.6 Network Rail is currently assessing whether the increased passenger numbers will create any rail capacity issues and reserves its position to make further representations if required on this issue.

1.7 Network Rail objects to any compulsory acquisition of rights over operational railway land and its assets or extinguishment of the rights held by Network Rail over operation railway land or any of its assets. Network Rail also objects to the seeking of powers to carry out works in the vicinity of the operational railway without first securing appropriate protections for Network Rail's statutory undertaking.

1.8 Network Rail submitted a Section 56 Representation on 14 July 2023.

1.9 Luton Rising Limited are yet to provide their comments on Network Rail's protective provision or include Network Rail's protective provisions on the face of the order. To ensure the safe and efficient operation of the railway network, it is essential that the development proceeds in consultation and agreement with Network Rail and that the form of the protective provisions annexed to these written representations is included in the final form of the Order, with any amendments to the protective provisions set out in a framework agreement which is to be agreed between the Luton Rising and Network Rail.

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<sup>1</sup> London Luton Rising Transport Assessment Table ES.2

- 1.10 In addition, Network Rail reserves the right to request the Luton Rising to enter into any property agreement which may be required following the clearance process. This for example can include deed of easement, licence to carry out works or conveyancing documents for the acquisition of land.
- 1.11 Network Rail is continuing to discuss with Luton Rising arrangements to ensure that the proposed development can be carried out while safeguarding Network Rail's undertaking. Any agreed arrangements are subject to the outcome of Network Rail's internal clearance process which is detail in section 3 below.
- 1.12 In order to ensure that interests are protected, Network Rail requests the examining authority recommend the attached form of protective provisions is included as a new part in Schedule 8 to the DCO.

## **2. The status of Network Rail**

- 2.1 Network Rail owns, operates, and maintains the railway infrastructure of Great Britain. Network Rail operate the railway infrastructure pursuant to a network licence (**the Network Licence**) granted under section 8 of the Railways Act 1993. The Network Licence contains a set of conditions under which Network Rail must operate. Network Rail's duties under the Network Licence are enforceable by the Office of Rail Regulation (**ORR**).
- 2.2 Under the terms of the Network Licence, Network Rail is under a duty to secure the operation, maintenance, renewal and enhancement of the network in order to satisfy the reasonable requirements of customers and funders. If the ORR were to find Network Rail in breach of its Licence obligations, including this core duty, then enforcement action could be taken against Network Rail.
- 2.3 Network Rail considers there is no compelling case in the public interest for the compulsory acquisition of rights over its land and Luton Rising should negotiate matters by private agreement to secure the necessary powers by consent.

## **3. Network Rail Clearance**

- 3.1 Clearance is a two-stage process by which Network Rail's technical and asset protection engineers review a proposal before clearance can be granted for a proposal to proceed. Clearance may be granted subject to conditions and requirements.
- 3.2 Network Rail is in the process of applying for clearance. Until the outcome of the clearance process is known Network Rail is unable to comment fully on the impact of the proposals on its operational railway.
- 3.3 Network Rail intends to keep the Examining Authority informed regarding the clearance process at the relevant examination deadlines.

## **4. Powers sought by Luton Rising and the impact on Network Rail**

- 4.1 The draft Order seeks powers (as defined in the Book of Reference) to:
- a) acquire temporary possession of plots 1-15,1-21 and 1-26 for offsite highway works;
  - b) acquire temporary possession of plots 1-27, 1-31,1-32,1-33,1-34 for Airport support facilities including the construction of a multi storey car park and surface car park;
  - c) acquire permanently plots 1-22, 1-25, 1-25a, 1-36,1-38, 1-42, 1-44,1-47;
  - d) acquire permanent rights over plot 1-41 to maintain the private road beneath the railway bridge; and
  - e) extinguish any existing rights belonging to Network Rail.
- 4.2 Network Rail does not consider that the scope of those rights is acceptable. The precise impact of the works on railway line and assets is being assessed and the carrying out of any works is subject to the clearance process as explained above. Even if the impact of the physical works is considered acceptable, the rights sought are very wide-ranging and exercisable over the entirety of several plots.

4.3 Network Rail considers that the Secretary of State, in applying section 127 of the Planning Act 2008, cannot conclude that the use of compulsory powers sought under the DOC would not cause serious detriment to the carrying on of Network Rail's undertaking, nor can any detriment to the carrying on of the undertaking, in consequence of the acquisition of the land, rights or use of land, be made good by the use of other land belonging to, or available for acquisition by, Network Rail.

## **5. Protective Provisions**

5.1 Network Rail engaged with Luton Rising Limited prior to submission of the Order regarding Network Rail's required form of protective provisions. In order to properly protect its undertaking Network Rail requires the form of protective provisions at Annex A to this document to be included in the final form of the Order.

## **6. Conclusion**

6.1 Network Rail will be liaising closely with Luton Rising Limited, and subject to the clearance being obtained, is willing to enter into private agreements to govern the carrying out of the proposed works. Network Rail has made a number of requests to the promoter to commence discussions on the proposed private agreements.

6.2 The discussions will relate to the following documents:

- a) protective provisions for inclusion in the DCO;
- b) property agreements for any easements, acquisition of freehold land and/or rights (subject to Network Rail's clearance process); and
- c) a framework agreement that describes and attaches the document referred to above, the protective provisions, clearance conditions and any necessary basic asset protection agreement, asset protection agreement or other engineering documents required for the benefit and protection of Network Rail's assets.

6.3 Without those agreements and satisfactory protective provisions being in place Network Rail considers the proposed development, if carried out in relation to the plots, would have serious detrimental impact on the operation of the railway and would prevent Network Rail from operating the railway safely and efficiently and in accordance with its Network Licence. Until such agreements are in place, and clearance has been obtained, Network Rail is unable to withdraw its objection to the DCO.

6.4 In the event, that insufficient progress is made regarding the protective provisions and private agreements, Network Rail will request to be heard in an appropriate hearing to explain the impact of the proposals on its railway undertaking.

### **Dentons UK and Middle East LLP**

12 October 2023

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