

The Harpenden Society (“The Society”)

Comments on the Applicant’s revised draft DCO

The draft DCO Clause 8(4)(b)

- 1 Our concern that clause 8(4)(b) would enable LR (or any third party) to operate the airport without the Secretary of State’s consent was not addressed adequately by LR in its response at REP2-037 page 5, it merely said that removal of the Secretary of State’s approval is justified by the fact that such consent is sought through this application and interested parties, the ExA and the Secretary of State can examine whether such consent is appropriate through the DCO process.
- 2 We cannot examine the appropriateness or otherwise of this clause through the DCO process as we don’t know who any substitute airport operator would be and whether they would be suitably qualified to operate the airport as required under section 17 (1) or by virtue of the Secretary of State’s disapplication of section 17(1) as a result of powers granted to the Secretary of State in section 17(2).
- 3 We recognise, as Ms Dowling explained at the beginning of the DCO Issue Specific Hearing (“ISH”), that it is normal to allow the consent to transfer the benefit of a planning permission to third parties. However, we believe that the principles set out in section 17(1) of the Airports Act 1986, that the directors must be suitably qualified to run an airport must be retained in the DCO to protect consumers and communities around the airport from an unqualified operator who fails to adhere to the safety or security standards that the current operator and every other airport operator adheres to in the UK – standards that make the UK a safe and secure place to fly into and out of.
- 4 We are particularly concerned that the oversight of the Secretary of State is required here as the directors of LR, who have said they might operate the airport, have extremely limited airport management experience and any third party’s experience won’t be subject to proper scrutiny because the self-same LR directors will make the appointment. We believe that the transfer of benefits should only be allowed if the current protections afforded by section 17(1) and section 17(2) of the Airports Act 1986 are retained.
- 5 We note, in this context, that the Gatwick Airport draft DCO does include a requirement for the Secretary of State’s consent to a transfer in the following circumstances:

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant of any or all of the benefits of the provisions and such related statutory rights as may be agreed is made to the following bodies—

- (a) in relation to a transfer or a grant of any works within a highway, the relevant highway authority; or
- (b) in relation to a transfer or a grant relating to any part of Work Nos. 10(g), 11(d) (office areas), 16 (new hangar), 26, 27, 28 or 29 (hotels), any registered company.

i.e. any transfer that isn’t related to highway or (essentially) building works.

The draft DCO clause 26(1)

- 6 At Compulsory Acquisition Hearing 1 (“CAH1”) the Applicant’s lawyer said in support of the compelling need for the development that “there is an **urgent and vital** need for the proposed development...[which] derives from national, regional, and Southern and sub regional, economic and other policies that are focused on building economic growth in those areas” and “that need is also driven by future demand forecasts which show that additional capacity is **urgently** needed to keep pace with that demand” (the emphasis is ours). These statements are consistent with LR’s unconstrained demand forecast (Figure 6.3 AS-125 Page 113) which show demand reaching 32 million passengers per annum between 2027 and 2029.
- 7 Yet the Applicant is leaving a full five years (from 2028 to 2032) between the completion of Phase 1 and the commencement of Phase 2a.
- 8 Accordingly, we do not believe that the compelling need for compulsory purchase are met and certainly there is no justification for the time limits for the exercise of authority to acquire land compulsorily to be more than the normal period of five years following the grant of a DCO. Granting LR a longer timeframe for exercising compulsory purchase rights would leave statutory undertakers, businesses and communities with an unnecessarily long period of uncertainty which will affect their own decision-making.

The draft DCO Schedule 2 Requirements Part 4 clause 27

- 9 We note that the current airport operator started to refer in the 1st Quarter 2023 noise report¹ to “Dispensations” (paragraph 1.4.4) where “LLA started to dispense movements in line with the Section 106 agreement. LLA submitted a Dispensation Policy to the Local Planning Authority to dispense (remove) movements from the night time movement limit, night time QC limit and early morning movement limit.” The report refers to 143 dispensations in March 2023, which if repeated over the year would amount to 1,716 effectively increasing the night-time limit by 18%. The vast bulk of these dispensations were attributed to “Passenger Hardship” without any explanation being given for what this means in practice.
- 10 To ensure that dispensations are only given for valid reasons and not as a result of operational failures on the part of low cost airlines squeezing in too many rotations into their schedules or other operational mismanagement, the existing policy should be scrapped and replaced by a policy that only allows dispensations in very limited unforeseen circumstances such as emergencies, weather and other reasons permitted at the discretion of the ESG, acting reasonably. Specifically airline timetabling bottlenecks should not be treated as a dispensation.

¹ [Quarterly Monitoring Report \(london-luton.co.uk\)](https://www.london-luton.co.uk/quarterly-monitoring-report)