



Responses to Deadline 3 Documents

Application by Luton Rising to extend London Luton Airport

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1 Introduction

- 1.1 This report provides the response of Luton Borough Council (LBC) as local planning authority (LPA) to various documents that were submitted at Deadline 3.
- 1.2 The five Host Authorities have jointly commissioned consultants in respect of noise (Suono [ISH3]), employment/economics (Genecon [ISH2]), need/forecasting (CSACL [ISH2]) and draft DCO/legal (Pinsent Masons [ISH1]), consequently, some comments will be common to all five host authorities.
- 1.3 The response is set out in tabular form to address points raised by the Applicant in relation to Issue Specific Hearing sessions 1 (ISH1: draft DCO) 2 (ISH2: Need and socio-economic issues), and 6 (ISH6: Biodiversity and heritage), however in relation to issue specific hearing 3 on noise, Suono have provided a separate note, which we have incorporated into this document.

2 ISH1 – Response to Applicant’s post hearing submission

Doc.Ref:	Subject	Issue	Response
REP3-048 Section 4.5	Article 44 (interaction with LLAOL planning permission)	The Applicant commits to pursuing a combined response with the Host Authorities at Deadline 5 in relation to the aspects of the existing planning permissions and section 106 obligations would be carried forward into the consent for the Proposed Development.	The Host Authorities welcome this commitment from the Applicant and look forward to working with it accordingly. LBC have already had one initial meeting with the Applicant.
REP3-048 Section 5.1	Definitions of “begin” and “commence”	The Applicant outlines that the terms are defined and used differently so as to address the issue arising in the Tidal Lagoon (Swansea Bay) case.	It should be noted that the practical effect of this approach is that very modest “material operations” could be carried out by the undertaker without necessarily complying with pre-commencement requirements (where the modest material operations are included in the list of works carved out from the definition of “commence”), in order to implement the development consent.
REP3-048 Section 6.7	Exceedance of a Limit	The two year period for exceedances of a Limit to be rectified.	While it is noted that the Applicant states that the two year period in which the authorised development could be operating in exceedances of a Limit “could” be addressed by way of the ESG refusing to approve a Mitigation Plan that did not contain a satisfactory programme to address issues more promptly, the Host Authorities note that the standard of effort required by the definition of “Mitigation Plan”

			contained in requirement 18 is “proposed mitigations and actions which are designed to avoid or prevent exceedances as soon as reasonably practicable;”. In the context of these provisions, it is the Host Authorities view that this standard is inadequate and would put the ESG in a weak position (were the undertaker to appeal to the Secretary of State) were it to require a more vigorous Mitigation Plan that sought to remedy exceedances of Limit in a shorter time period. Please see the Host Authorities’ response to ExA questions DCO.1.14 for further commentary on this provision.
REP3-048 Paragraph 6.10.4	ESG membership	The Applicant states its view that Dacorum Borough Council ought not be on the ESG on account of the predicted impacts to residents in its administrative area, and should instead be included in the technical panel on noise.	It remains the view of the Host Authorities that Dacorum Borough Council ought to be a member of the ESG.

3 ISH2 – Response to Applicant’s post hearing submission

Doc.Ref:	Subject	Issue	Response
REP3-049 Para 3.1.14	Need	Government policy on MBU. Applicant suggestion that serving demand locally was also Government policy	This was commented upon in TR020001-001882 (ISH2-Post-hearing submissions of Various Host Authorities) [REP3-093], where it was (a) noted that the

			<p>Applicant's Need Case (AS-125) did not refer to this element of the MBU, (b) requested that a specific Policy document reference be provided, and (c) commented that 'Making Best Use' was not necessarily consistent with 'Serving Demand Locally' as identified during the Hearing by the ExA.</p> <p>It is unclear why the Applicant should raise the issue of serving demand locally, as its own analyses appear to suggest that growth in demand is predicted to be slowest in the areas closest to Luton, with growth rates higher in more distant areas. This is illustrated for example in Figure 6.6 (Page 119) of the Need Case (AS-125). While growth at Luton would include handling more passengers from the areas close to the airport, the proportion of these passengers would reduce given the faster growth predicted from more distant areas.</p>
REP3-049 Para 3.1.19	Need	Applicant's suggestion that London airport system is not a single market	<p>In 2019, some 36% of terminating passengers at the London area airports were foreign residents (Civil Aviation Authority Passenger Survey 2019). While more frequent visitors to the UK may have a preferred airport, many of these passengers with a</p>



			<p>central London destination will be 'airport neutral' and be simply 'flying to London'.</p> <p>Of total terminating passengers (i.e. including foreign residents) in 2019, some 29% were from outside the South East of England, with the balance having an origin or destination within the region. This last group will select the airport they use for a wide and complex range of reasons, with geographic proximity/ease of access being just one. Destination, flight days and times, price and reputation of both airport and airlines will be other important considerations.</p> <p>The airports themselves offer different types of services, with Heathrow being important for long haul flights, Gatwick noted for short/medium haul holiday destinations, and Luton and Stansted offering more flights to Eastern Europe. There is though a core range of European destinations on offer from most of these airports, and passenger choice then focuses on price, timing of flights, seat availability and perhaps airline service reputation. It is likely that most travellers have used different London airports at different times, no</p>
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			<p>matter where in the South East region they live.</p> <p>This is a complex picture within which looking to minimise airport access costs for passengers is just one component, alongside airline objectives of minimising costs and maximising profits.</p>
REP3-049 Para 3.1.20 and 3.1.21	Need	Balancing Government policies	It must first be demonstrated that Serving Demand Locally is indeed government policy. It is not clear that the Applicant's response addresses the ExA's question
REP3-049 Para 3.3.11 and 3.3.12	Need	ExA's questioning of GDP assumptions	This is considered in Row 7 of document CSACL-003, CSACL's response to TR020001-001683-8.43 (Response to Chris Smith Aviation Consultancy Limited - Initial Review of DCO Need Case for the Host Authorities) [REP2-042].
REP3-049 Para 3.4.1	Need	Capacity and Coordination	It is not clear that this has been considered within previous agenda items as stated in this paragraph.
REP3-049 Para 3.5.1	Need	Other Airport Capacity	<p>It is not clear that this has been considered within previous agenda items as stated in this paragraph.</p> <p>In addition to being discussed in CSACL's report to the HAs [REP2-057] (Para 3.44 <i>et seq.</i>), this is also covered in CSACL-003, Row 12, and has a material bearing on the timing of</p>

			the environmental and economic impacts that would be generated by the proposed expansion.
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4 ISH3 Response to Applicant’s post hearing submission

- 4.1 This response was prepared by Suono on behalf of the five host authorities and provides comments on the Applicant’s ISH3 post hearing submission [REP3-050], where specific points are not covered within the host authorities’ post hearing submission previously submitted [REP3-094].
- 4.2 The two main issues addressed here are the Applicant’s use of 2019 baseline use and the noise mitigation toolbox.

2019 Baseline

Use Within Assessments

- 4.3 The relevant Section of the Applicant’s Post Hearing Submission, Issue Specific Hearing 3 [REP3-050] is Section 6.2 Use of Actuals and Consented baseline. Paragraphs 6.2.4 and 6.2.5 state:

“The first method to identify adverse likely significant effects in Environmental Impact Assessment terms (EIA) due to noise change as a result of the Proposed Development. This method identifies noise change by comparing the situation with the Proposed Development (the Do-Something scenario) to the situation without the Proposed Development (the Do-Minimum scenario) in each future assessment year. The future air noise baseline (the Do-Minimum) is compliant with the airport’s current consented long term noise Limits in each assessment year and therefore demonstrates a scenario where the airport is operating within its currently consented noise Limits. The 2019 baseline does not factor into this assessment.

“The second method is to identify significant effects on health and quality of life in Government noise policy terms. These are identified when noise exposure with the Proposed Development exceeds the SOAEL Threshold. Again, the identification of significant effects on health and quality of life is with reference to the noise exposure from the Proposed Development in a given assessment year and is not affected by the 2019 baseline.”

- 4.4 It is accepted that the first method referenced is not affected by any historic baseline, so long as the future baseline is correct, which is also accepted. The second method referenced is however in direct contradiction to the information within Environmental Statement Chapter 16: Noise and Vibration [REP1-003].

- 4.5 Within Environmental Statement Chapter 16: Noise and Vibration [REP1-003], under the heading, “Avoid significant adverse effects on health and quality of life from noise”, Section 16.9.8 states:
- “For air noise, the 2019 Actuals baseline determines the number of properties last experiencing significant adverse effects on health and quality of life when the airport was operating under pre-covid circumstances. In this assessment, future DS air noise predictions for each assessment phase are compared to the 2019 Actuals baseline to demonstrate that there will be a reduction in properties experiencing significant adverse effects on health and quality of life. ...”*
- 4.6 Sections 16.9.89 and 16.9.90 of the same document then state:
- “Table 16.36 demonstrates that there is a reduction in the total population exposed between the LOAEL and SOAEL and between the SOAEL and UAEL in DS 2027 compared to the 2019 Actuals Baseline. This reduction in total population exposed is due to a reduction in contour areas as a result of new generation aircraft entering the fleet. There are no receptors in the study area exposed to noise levels above the UAEL in any assessment scenario.*
- “Significant adverse effects on health and quality of life in noise policy terms are determined by noise exposure above the SOAEL as defined in Table 16.13. During the daytime and night-time, the population exposed to noise levels above the SOAEL in the DS scenario are also exposed to noise levels above the SOAEL in the 2019 Actuals Baseline. Therefore, there are no new significant adverse effects on health of quality life during the daytime and night-time in assessment Phase 1.”*
- 4.7 The same statements are included for other assessment phases in Sections 16.9.114-115 and 16.9.138-139.
- 4.8 The 2019 Actuals baseline can therefore clearly be seen within the Environmental Statement Chapter 16: Noise and Vibration [REP1-003] to be used to identify significant effects, which have been underplayed by the use of an inflated baseline. Given that the baseline quantifies conditions during a breach of planning condition, the assessment cannot be taken as correct.
- 4.9 The Applicant states in Section 6.2.8 that a sensitivity test has been undertaken using the 2019 Consented baseline, which does not change the “conclusions drawn from this comparison in terms of EIA likely significant effects and residual significant effects on health and quality of life are unchanged”.
- 4.10 This statement directly contradicts the information set out in the second part of Section 6.2.4 of the Applicant’s Post Hearing Submission – Issue Specific Hearing 3 (ISH3) [REP3-050], as the 2019 Actual baseline is clearly being used to draw conclusions on likely significant effects, contrasting the

statements from the Applicant where they previously stated the baseline as not affecting the assessment.

- 4.11 While the assessment of likely significant effects may not materially differ when using Consented against Actual 2019 as the baseline, the population counts would be incorrect, and thus any decision would be based on incorrect information. A compliant baseline must be used.
- 4.12 It is also imperative to note that these likely significant effects are based on the Core Planning Case, instead of the Faster Growth sensitivity case which are used to set the future noise contour limits. There is not enough evidence within the Environmental Statement Chapter 16: Noise and Vibration [REP1-003] to identify which populations will be affected if using 2019 Actual baseline and the Faster Growth sensitivity case in the same assessment.
- 4.13 There are also multiple references to future noise contours “reducing” within Environmental Statement Chapter 16: Noise and Vibration [REP1-003] that do not stand true should 2019 Actuals be replaced with 2019 Consented. This amounts to an unfair and unreasonable bias when reading the Noise Chapter.

Applicant’s Reasoning

- 4.14 Applicant’s Post Hearing Submission – Issue Specific Hearing 3 (ISH3) [REP3-050], Section 6.2.7 goes on to state:

“Where the 2019 baseline does come into play is when comparisons are made to the ‘current baseline’. This has been done in the first instance using the 2019 Actuals baseline to provide context so that people can understand how noise levels will change with the Proposed Development by comparison to what was actually flown and was actually experienced by communities in the baseline year. This is in line with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (which refers to the baseline scenario as “a description of the relevant aspects of the current state of the environment” in Schedule 4, Paragraph 3) (Ref 10).”
- 4.15 The use of 2019 Actual baseline clearly goes beyond providing context within the ES and has been used to determine significant adverse effects, as can be seen in the Sections from the ES quoted above.
- 4.16 If the baseline is used solely to provide context for local communities, then it would be materially more beneficial to use 2022, 2021 or 2020, rather than a summer which occurred 4 years prior.
- 4.17 Using the same reference to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (‘EIA Regulations’) as Section 6.2.7, “current” cannot be read as 2019 using the Applicant’s definition. Ignoring intervening years because of the pandemic as atypical would also allow for omitting of 2019 as atypical since it reflects a breach of planning condition.

4.18 There can be a strict reading of EIA Regulations, when it is clearly not restrictive in what “current” refers to, nor does it clearly allow for use of a year where the baseline was in breach of condition.

4.19 Further guidance is provided in an IEMA issued document entitled ‘Guidelines for Environmental Noise Impact Assessment’, published in 2014.

4.20 Section 3.11 of this IEMA document, under the heading of ‘Characterising the existing noise environment’, states:

“It is necessary to have a clear understanding of the existing situation. Usually this will require the measurement of baseline noise levels at times of the day, night, week, season or year when the project is likely to have an impact. In some instances where detailed baseline data are available, e.g., traffic flow data, it may be appropriate to define the baseline noise environment by prediction. Further guidance on how to determine the baseline conditions is provided in Chapter 5.”

4.21 Section 5 is titled ‘Establishing the baseline’ and offers useful guidance for determining the relevant baseline for EIA. Sections 5.5 to 5.6 state:

“5.5 Baseline noise levels may be required for different years. In many cases the year in which the study is carried out will be relevant, and these baseline noise levels may be referred to as existing (or current). However, there may be occasions when baseline data are required for other years (see Paragraphs 5.7 and 5.8).

5.6 Baseline noise levels can serve several purposes in the assessment process:

- They provide context for the noise levels predicted to arise from the proposed development against which they may be appraised.*
- They may be required as a formal part of the noise assessment process.*
- They may demonstrate that the noise environment is already unsatisfactory.”*

4.22 The third and fourth sentences of Section 5.8 states:

“Although it is possible to measure noise levels at the time an assessment is conducted, this may not be the relevant time for which the baseline noise levels are required. Baseline noise levels may be determined by direct measurement, by prediction, or by a combination of these methods.”

4.23 The Host Authorities consider Luton Rising’s approach to be in conflict with the IEMA guidance, which states that predicted noise levels can be used (rather than actual), and / or multiple years (i.e., years where Luton Airport was not in breach of its planning conditions). Both these examples show that “current” does not have to be taken as the 2019 Actuals baseline. In conclusion, as has been requested in Statement of Common Ground (SoCG) meetings, in the Noise Envelope Design Group meetings, and in multiple

written submissions to the DCO Examination, the Applicant needs to revise their assessment to comply with UK aviation noise policy, by basing future contour area Limits from the core assessment case and by committing to an equal share of noise reduction benefits between the local community and the airport, based on a compliant baseline.

Noise Mitigation Toolbox

4.24 Action 22 of Applicant's Post Hearing Submission – Issue Specific Hearing 3 (ISH3) [REP3-050], within Section 6.3.8 onwards, states that noise mitigation measures have been set out within the updated Green Controlled Growth (GCG) Explanatory Note [REP3-015].

4.25 The main mitigation measure relied on is the release of slot capacity. Other mitigation measures are set out in Section 3.2.16 of the Green Controlled Growth (GCG) Explanatory Note [REP3-015]:

a. working with airlines to implement noise abatement operational procedures such as Continuous Descent Approaches (CDA), delayed landing gear deployment and adherence to noise preferential routes; and

b. methods of incentivisation for the adoption of quieter aircraft such as differential landing charges and Departure Noise Limits.

4.26 Taking information from within the 2021, 2020 and 2019 Annual Monitoring reports¹ for Luton Airport and Delayed Landing Gear Deployment Trial 2017 report², the following can be identified:

- Continuous Descent Approaches are already in use, being used by 91%, 88% and 89% of all aircraft arrivals within 2019, 2020 and 2021, respectively.
- Delayed landing gear deployment is already in use at Luton and does not have an effect on noise levels within any contour areas (only applying beyond 5 nautical miles).
- Adherence to noise preferential routings is well controlled at Luton, with only 53, 11 and 23 instances of aircraft deviating from preferential routings occurring within 2019, 2020 and 2021, respectively. These are from a total number of aircraft movements of 61,560, 63,593 and 141,481 in each respective year, so clearly represent an inconsequential minority of flights.
- Differential landing charges and Departure Noise Limits have both been in effect at Luton Airport for some time and did not prevent, or assist in preventing, previous breaches of planning noise conditions. Therefore, they cannot be taken as a viable mitigation measure. For reference, there were 0, 2, and 6 Departure Noise Limit violations in 2019, 2020 and 2021, respectively.

¹ <https://www.london-luton.co.uk/corporate/community/noise/annual-monitoring-reports>

² <https://www.london-luton.co.uk/corporate/community/noise/community-noise-reports>

4.27 The only mitigation strategy remaining is therefore slot allocation. The Applicant has committed to responding to “Action 28: Confirm whether there is any mechanism to remove a slot once it has been allocated, has accrued grandparent rights and is operating in accordance with the slot rules.” at Deadline 4. The Host Authorities await this information.

5 ISH4 Response to Applicant’s post hearing submission


5.1 There were no specific issues arising from the Applicant’s response [REP3-051 and REP3-074]. LBC had clarified the position in relation to the link road to Eaton Green Road within LBC’s Local Impact Report (REP1A-004 – paragraphs 4.9.8-4.9.11) and addressed the issue of fly-parking in its post hearing submission to Deadline 3 (REP3-106).

6 ISH5 Response to Applicant’s post hearing submission

6.1 There were no specific issues arising from the Applicant’s response to the issue specific hearing on air quality [REP3-052].

7 ISH6 – Response to Applicant’s post hearing submission

Doc.Ref:	Subject	Issue	Response
REP3-052 Para 3.1.8	County Wildlife Site	Luton Borough Council to submit the comments it made in relation to the smaller loss of/ replacement of the County Wildlife Site in relation to the Green Horizons Park development and a commentary on this. Applicant to respond to this at the following deadline.	LBC submitted its comments in writing at Deadline 3 (REP3-106). LBC has continued to meet with the Applicant to discuss the loss of the CWS, replacement of habitats, the maintenance of the new habitats and the Outline Landscape Biodiversity and Mitigation Plan ([AS-029]). LBC awaits the written response of the Applicant at Deadline 4 and anticipates further meetings once this has been received.



REP3-052 Para 8.1.8	Historic Buildings	LBC queried the lack of inclusion of Hart House in the EIA. The Applicant confirmed in response to LBC that Hart House is included in the desk-based assessment [APP-072] a	LBC submitted its comments in the post hearing submission to Deadline 3 (REP3-106).
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