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**8.88 Applicant's response to Issue Specific Hearing 2
Actions 11, 12 and 13: New Policy Status Paper**

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The Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

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

**8.88 APPLICANT'S RESPONSE TO ISSUE SPECIFIC HEARING 2
ACTIONS 11, 12 & 13: NEW POLICY STATUS PAPER**

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1 INTRODUCTION AND SUMMARY OF THE APPLICANT'S POSITION

1.1.1 Luton Rising (a trading name of London Luton Airport Limited ('the Applicant'), is proposing to expand London Luton Airport (the airport) through an application for development consent for works that would allow expansion from the currently permitted capacity to accommodate 32 million passengers per annum (mppa). This note addresses a number of issues raised by the Examining Authority (ExA) at Issue Specific Hearing 2 (Need, Socio-economic matters, Greenhouse Gases and Climate Change). It has been prepared in response to various action points raised by the ExA at the Issue Specific Hearing. These actions are set out below:

- a. ISH2 Action 11: Provide a note discussing the status of the Jet Zero Strategy ('JZS') (2022) (Ref 1) and Transport Decarbonisation Plan ('TDP') (2021) (Ref 2), with particular regard to their treatment as Government 'policy';
- b. ISH2 Action 12: Include an assessment in the note (Action Point 11) of the implications of the Climate Change Committee's ('CCC') 2023 Progress Report on the deliverability of the Jet Zero Strategy;
- c. ISH2 Action 13: Include reference in the note (Action point 11) to the paragraphs relating to the policy status of strategies in the Secretary of State's decision letter for the Manston Airport DCO of 18 August 2022.

1.1.2 In summary, this note confirms the Applicant's view that both the JZS and TDP are, and have been, treated by the Secretary of State ('SoS') as Government policy, and that they should be afforded full weight as such recent statements of policy. This includes reference to the relevant paragraphs within the Manston Airport DCO decision relating to the status of the JZS and TDP that confirm this position.

1.1.3 It further confirms the Applicant's view that the advice given in CCC 2023 is unlikely to have any or any material impact on Government's approach to the implementation and deliverability of JZS.

2 ISH2 ACTION 11: PROVIDE A NOTE DISCUSSING THE STATUS OF THE JET ZERO STRATEGY (2022) AND TRANSPORT DECARBONISATION PLAN (2021), WITH PARTICULAR REGARD TO THEIR TREATMENT AS GOVERNMENT 'POLICY'

2.1 Introduction

2.1.1 The Applicant's view that the JZS and TDP represent policy is based on both the fact that they expressly describe themselves as such, and that they have been treated as policy in airport-related and other planning decisions taken since they were published.

2.2 Self-described policy documents

- 2.2.1 Both the JZS and TDP contain explicit references to being statements of Government policy. Both are formal statements produced and published by the Department of Transport and each contains an introductory statement from the relevant SoS and/or Ministers.
- 2.2.2 In relation to aviation, the TDP defers to the JZS as the Government's statement of the steps to be taken to reach net zero emissions by 2050. The TDP sets out several commitments in relation to aviation at pages 121 to 127. These were subsequently included in the JZS following the consultation on the strategy indicated within the TDP.
- 2.2.3 As to JZS, Section 3 ('Our policy measures') expressly states that the measures set out therein are policies intended to maximise emissions reductions. Paragraph 3.61 states *"The Government's existing planning policy frameworks, along with the Jet Zero Strategy and the Flightpath to the Future strategic framework for aviation, have full effect and are material considerations in the statutory planning process for proposed airport development."* (emphasis added).
- 2.2.4 Section 4 of the JZS ('Five Year Delivery Plan') goes on to explicitly set out the policy commitments being made by Government through JZS at pages 59-76.
- 2.2.5 As to the TDP, it is expressly described it as part of a "series of policy announcements" being made in relation to decarbonisation (see page 17), indicating Government's view that it also represented a policy announcement.
- 2.2.6 Whilst it is clear, in relation to both JZS and TDP, that further, individual policies relating to the achievement of decarbonisation in aviation and the wider transport sector will continue to be developed, that has no bearing on the fact that it is current government policy to implement such measures and strategies as are already described in those documents.
- 2.2.7 In R (Friends of the Earth Ltd and others) v Heathrow Airport Ltd [2020] UKSC 52 the Supreme Court dealt with the concept of 'Government policy' in the context of section 5 of the Planning Act 2008 as follows:

"... The section speaks of "Government policy", which points toward a policy which has been cleared by the relevant departments on a government-wide basis. In our view the phrase is looking to carefully formulated written statements of policy such as one might find in an NPS, or in statements of national planning policy (such as the National Planning Policy Framework), or in government papers such as the Aviation Policy Framework. For the subsection to operate sensibly the phrase needs to be given a relatively narrow meaning so that the relevant policies can readily be identified. ..." (para 105)

"... In our view, the epitome of "Government policy" is a formal written statement of established policy. In so far as the phrase might in some exceptional circumstances extend beyond such written statements, it is appropriate that there be clear limits on what statements count as "Government policy", in order to render them readily identifiable as such. In our view the criteria for a "policy" to which the doctrine of legitimate expectations could be applied would be the

absolute minimum required to be satisfied for a statement to constitute “policy” for the purposes of section 5(8). Those criteria are that a statement qualifies as policy only if it is clear, unambiguous and devoid of relevant qualification ...” (para 106)

2.2.8 It is the Applicant’s view that, considering the above, the TDP (Ref 2) and the JZS (Ref 1) are clear and unambiguous statements of Government policy and to be accorded the status of such.

2.3 Treatment of JZS and TDP as policy documents in other decisions

2.3.1 Consistent with JZS and TDP being described by Government as statements of policy, they have been treated as such in the airport-related decisions taken since they were introduced. Dealing with those decisions in chronological order:

a. **Bristol Airport appeal (February 2022):** At the time of the SoS decision on the Bristol Airport appeal, TDP had been published and the consultation that led to JZS launched (although the JZS itself was not published until after the decision). At paragraph 81 of the Inspector’s report, TDP is described as a “*statement of policy*”.

b. **Manston Airport DCO (August 2022):** Paragraphs 139 and 141 of the SoS’ decision letter refer to both JZS and TDP under the heading ‘Climate Change’. At paragraph 149, the SoS sets out his conclusions on climate change, referring to both documents as:

“...set[ting] out a range of non-planning policies and measures that will help accelerate decarbonisation in the aviation sector, will ensure Government’s decarbonisation targets for the sector and the legislated carbon budgets can be met without directly limiting aviation demand”.

As a consequence, the SoS goes on to reject the ExA’s view that carbon emissions should attract moderate weight against the proposals, concluding that it should instead be regarded as a ‘neutral’ factor in the planning balance. This further indicates a substantial degree of weight attaching to both policies.

c. For the avoidance of doubt, neither JZS nor TDP were addressed in the ExA’s report, which was authored in 2019 and pre-dated both.

d. **Manston Airport Judicial Review (September 2023):** In the judgment relating to the unsuccessful judicial review of the Manston Airport DCO decision, Mr Justice Dove found both JZS and TDP to be policies upon which the SoS was entitled to rely in order to reach the conclusion that carbon emissions should not weigh against the Manston proposals. Paragraphs 101-105 of R (Dawes) v Secretary of State for Transport [2023] EWHC 2352 (Admin) (Ref 3) refer, including:

“The defendant relied upon those policies, and in particular the JZS, in the context for which they had been designed. That context starts with the legislative architecture of the 2008 Act and the provisions set out above designed to ensure that its aims are achieved. The context also included policies identified by the defendant to support the achievement of the

objectives in the 2008 Act without precluding, for instance, further airport expansion. The policies, and in particular JZS, are multifaceted, and include (consistently with the legal architecture) the reliance upon other legislative measures such as the UK Emissions Trading Scheme and CORSIA, along with the complimentary measures which have been described above in the extracts from the document. In my judgment it was not legally inappropriate or incorrect for the defendant to rely upon his own policies designed to enable achievement of carbon budgets by the aviation sector to reach the conclusion that in the light of those new policies the question of greenhouse gas emissions and climate change could properly be regarded as neutral in the overall planning balance.”

- e. **London Luton Airport 19mppa decision (October 2023):** The Inspectors' Report ('IR') underlying the SoS's decision to grant the airport operator's application to increase airport capacity to 19mppa (Ref 4) refers to JZS as policy throughout. In particular, paragraph 15.69 refers to the proposal being consistent with the Governments "*policies and strategies, including...JZS*". At paragraph 15.72, the IR stated:

"JZS acknowledges that decarbonising aviation will not be straightforward with multiple solutions at different stages of technological and commercial readiness but acknowledges there are multiple possible pathways to realise its goal [10.7]. It is also a long-term approach. Approaches to reducing aviation emissions were explored at the inquiry, but it is clear that ultimately this a matter which is to be addressed at national and international level. However, irrespective of the parties' positions on JZS and MBU, the NPPF is clear that the decision on this proposal should assume that the pollution control regimes within them and under the auspices of the CCA will operate effectively."

This was consistent with the approach of both the Applicant and the local planning authority who are referred to as having treated JZS as policy in paragraphs 8.9 and 9.21 of the IR. The SoS' decision letter expressly confirms his agreement with paragraph 15.69 IR at paragraph 21:

"In addition, the aviation emissions arising from the proposal would be within assumptions within the Government's policies and strategies, particularly the Making Best Use of existing runways (MBU) and Jet Zero Strategy (JZS), no material adverse effects would arise. Therefore, the proposal would not impede the Government in achieving its emissions reductions targets, including through the sixth Carbon Budget and the Jet Zero trajectory, either by itself or in combination with other expansion proposals (IR15.69)"

Neither the SoS decision letter or IR refer to the status of the TDP.

- 2.3.2 TDP has additionally been referred to by the SoS as representing policy in the context of decisions taken on highways development consent orders: see, for example, paragraph 99 of the SoS' decision on the A47/A11 Thickthorn Junction DCO.

2.3.3 The policy measures which the Government has put in place to address carbon from aviation growth should not be for debate. The Examination is not party to all the consultation responses and assessments available to Government. It is not the role of the ExA to seek to go behind the policy and to challenge its merits. This view is further reinforced by the fact that the ambitions set out in JZS and TDP are underlain by legislative obligations upon Government to achieve net zero emissions by 2050.¹

2.3.4 In all the circumstances, both JZS and TDP are properly to be regarded as statements of Government policy in relation to decarbonisation of the aviation and wider transport sector. Given that they are both recent and consistent with one another, there is no reason to afford them anything other than full weight.

3 ISH2 ACTION 12: INCLUDE AN ASSESSMENT IN THE NOTE (ACTION POINT 11) OF THE IMPLICATIONS OF THE CLIMATE CHANGE COMMITTEE'S 2023 PROGRESS REPORT ON THE DELIVERABILITY OF THE JET ZERO STRATEGY

3.1.1 The Applicant has concluded that the CCC's progress report on the deliverability of the Jet Zero Strategy (2023) (Ref 5) is unlikely to have any implications for the deliverability of JZS.

3.1.2 It is important to note that the CCC's role is advisory, non-binding and that it does not make policy (that is the responsibility of Government). In formulating policy, it is open to Government to accept or reject the advice of the CCC, as with any other advice it receives.

3.1.3 The CCC has advocated for a policy of no net expansion of airport capacity since its *Sixth Carbon Budget Advice* (2020). Its view was that such a policy was required in order to ensure the UK could achieve the required pathway for aviation emissions set out in that budget.

3.1.4 JZS was adopted in July 2022. It reflects the Government's own assessment, informed by a range of inputs wider than the CCC's advice alone, that net zero in aviation can be achieved alongside a growth in airport capacity. *Flightpath to the Future* (which confirmed the currency of earlier policy contained in *Making Best Use*) was also adopted in May 2022 notwithstanding the CCC's 2020 advice.

3.1.5 The CCC produced a progress report in 2022 ('CCC 2022') (Ref 6). This maintained its position that there should be no net expansion in UK airport capacity if the UK is to achieve the pathway to net zero, although it qualified the position by reference to the potential for expansion if the carbon intensity of aviation is reduced. It advocated the assessment of the Government's airport capacity strategy in the context of Net Zero and the introduction of a demand management framework.

¹ Climate Change Act 2008, section 1 (as amended).

- 3.1.6 Government responded to CCC 2022 in March 2023 (Ref 7). In response to the recommendation relating to airport capacity, it confirmed (at #197) that the Government remains:
- “...committed to growth in the aviation sector where it is justified. Our analysis in the Jet Zero Strategy shows that the sector can achieve net zero carbon emissions from aviation without the government needing to intervene directly to limit aviation growth... Airport growth has a key role to play in boosting our global connectivity and levelling up in the UK. Our existing policy frameworks for airport planning provide a robust and balanced framework for airports to grow sustainably within our strict environmental criteria. We do not, therefore, consider restrictions on airport growth to be a necessary measure.”*
- 3.1.7 CCC 2023 was published in June 2023 (Ref 8) and essentially repeats the concerns expressed in CCC 2022 about the potential impact of airport expansion on the UK's ability to achieve the required pathway for aviation emissions. It asserts that existing Government policy is insufficient to achieve an outcome consistent with the need to manage demand, and that no net expansion should be permitted until an airport capacity management framework is in place, following which net airport capacity expansion should only take place if the carbon-intensity of the aviation sector is outperforming the Government's aviation emissions trajectory and can accommodate the additional demand.
- 3.1.8 The Government's response to the CCC's 2023 Progress Report was published on 26 October 2023 (Ref 9) and stated (at Priority R2023-037 on page 43) that:
- “We are anti-aviation emissions, not flying, and want to deliver sustainable flying for everyone to enjoy holidays, visit friends and family overseas and to travel for business. We remain of the view that our existing policy frameworks for airport planning – the Airports National Policy Statement and Beyond the horizon, the future of UK aviation: Making best use of existing runways - provide a robust and balanced framework for airports to grow sustainably within our strict environmental criteria.*
- Our analysis in the Jet Zero Strategy continues to demonstrate that the sector can achieve net zero carbon emissions by 2050 without the government needing to intervene directly to limit aviation growth. The analysis uses updated airport capacity assumptions consistent with the latest known expansion plans at airports in the UK. Planning decision-makers and applicants should consider all relevant Government policy, including the Jet Zero Strategy, when considering airport expansion proposals.*
- The Government has always been clear that the expansion of any airport must meet our climate change obligations. Any planning application submitted by an airport will be judged by the relevant planning authority, taking careful account of all relevant considerations, including environmental impacts and proposed mitigations.*
- We will review our Jet Zero Strategy every five years to ensure the aviation sector is on track to achieve net zero by 2050, and, if appropriate, we will consider*

reviewing our policy frameworks for airport planning to ensure they remain compatible with achieving our net zero target.”

- 3.1.9 The Government is, hence, clear that the current policy frameworks in support of airport growth remain in force unless or until a Government review of progress against the targets of the JZS gives rise to a need to revise them.
- 3.1.10 The Government itself published a progress report on the JZS - *Jet Zero – One Year On* – in July 2023 (Ref 10). This outlines the steps being taken and the progress made on achieving this objective the JZS objectives. It is clear from this update report, that the emphasis remains on securing growth through action taken to reduce the carbon impact, stating in the Foreword that:
- “The Strategy focuses on the rapid development of technologies in a way that maintains the benefits of air travel, whilst maximising the opportunities that decarbonisation brings for the UK.”*
- 3.1.11 Subsequent statements made to the House of Commons in September 2023 about airport capacity expansion at London Luton Airport are also consistent with this view that the Government is not seeking to restrict aviation growth. The Prime Minister confirmed the Government’s position that net zero can be achieved through aviation decarbonisation rather than imposing restrictions on flying (Ref 11).
- 3.1.12 This must be viewed within the overarching context of the strong support for aviation growth set out in a range of policy documents as summarised in Section 3 of the **Need Case [AS-125]**, which link growth in airport capacity through the Making Best Use policy (Ref 12) to delivering economic and consumer benefits.
- 3.1.13 Ultimately, the means of achieving net zero in aviation is a matter for Government and not the CCC.

4 ISH2 ACTION 13: INCLUDE REFERENCE IN THE NOTE (ACTION POINT 11) TO THE PARAGRAPHS RELATING TO POLICY STATUS OF STRATEGIES IN THE SECRETARY OF STATE’S DECISION LETTER FOR MANSTON AIRPORT DCO OF 18 AUGUST 2022

- 4.1.1 See response to ISH2 Action 11 in section 2 above.

GLOSSARY AND ABBREVIATIONS

Term	Definition
CCC	Climate Change Committee
DCO	Development Consent Order
ExA	The Examining Authority
JZS	Jet Zero strategy
TDP	Transport Decarbonisation Plan

REFERENCES

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- Ref 1 Department for Transport, Jet Zero Strategy, July 2022.
- Ref 2 Department for Transport, Transport Decarbonisation Plan, July 2021.
- Ref 3 R (Dawes) v Secretary of State for Transport [2023] EWHC 2352 (Admin)
- Ref 4 TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77 APPLICATION MADE BY LONDON LUTON AIRPORT OPERATIONS LTD (LLAOL) LONDON LUTON AIRPORT, AIRPORT WAY, LUTON, LU2 9LY APPLICATION REF: 21/00031/VARCON, Decision Letter and Inspectors Report, 13 October 2023
- Ref 5 Committee on Climate Change, Progress Report to Parliament 2023, June 2023
- Ref 6 Committee on Climate Change, Progress Report to Parliament 2022, June 2022
- Ref 7 HM Government, Responding to the Climate Change Committee's (CCC) 2023 Annual Progress Report to Parliament, October 2023
- Ref 8 HM Government, Responding to the Climate Change Committee's (CCC) 2022 Annual Progress Report to Parliament, March 2022
- Ref 9 The Prime Minister's speech on Net Zero, 20 September 2023
- Ref 10 Department for Transport, Jet Zero – one year on, July 2023.
- Ref 11 Prime Minister's speech on Net Zero, 20 September 2023.
- Ref 12 Department for Transport, Beyond the horizon: making best use of existing runways, June 2018.