

November 2023

London Luton Airport Expansion

Planning Inspectorate Scheme Ref: TR020001

Volume 8 Additional Submissions (Examination)

**8.114 Applicant's Response to Deadline 4 Submissions
Appendix A - Luton Borough Council (Response to D3
Documents) (REP4-191)**

Infrastructure Planning (Examination Procedure) Rules 2010

Application Document Ref: TR020001/APP/8.114

The Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

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

**8.114 APPLICANT'S RESPONSE TO DEADLINE 4 SUBMISSIONS
APPENDIX A - LUTON BOROUGH COUNCIL (RESPONSE TO
DEADLINE 3 DOCUMENTS [REP4-191]**

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Table 1.1 Applicant's response to submission by Luton Borough Council at Deadline 4

I.D	Topic	Deadline 4 submission (Verbatim)	Luton Rising's Response
1	Draft Development Consent Order	<p>Issue</p> <p>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.</p> <p>Response</p> <p>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.</p>	<p>In the Applicant's Post Hearing Submission – Issue Specific Hearing 1, in paragraph 5.1, the Applicant stated:</p> <p><i>"The Applicant explained its approach to defining both "begin" and "commence" in the Draft DCO [REP2-003]. The Applicant confirmed that the primary justification for those two separate definitions is to avoid the issues which arose in the Court of Appeal case Tidal Lagoon (Swansea Bay) PLC v SSBEIS [2022] EWCA Civ 1579. In the Draft DCO [REP2-003] "commence" is used in the context of facilitating pre-commencement activities, whereas the term "begin" is broader and links requirement 4 to any material operation (as defined in section 155 of the Planning Act 2008) forming part, or carried out for the purposes, of the Proposed Development."</i></p> <p>The Applicant agrees that the distinction between these two definitions does permit the carrying out of certain material operations without necessarily having to comply with pre-commencement requirements. However, the Applicant considers that this approach is reasonable and proportionate as the works that are excluded from the definition of "commence" do not give rise to any materially new or materially different effects to those assessed in the Environmental Statement, being either de minimis or having minimal potential for adverse effects. This is in line with the Planning Inspectorate's Advice Note 15 (Drafting Development Consent Orders) and permits the Applicant to carry out low impact preparatory works. Such works would only take place following the grant of the Order and while the Applicant was working to discharge the pre-commencement requirements.</p> <p>As explained in the Explanatory Memorandum [TR020001/APP/2.02], this is a widely precedented approach.</p>
2	Green Controlled Growth	<p>Issue</p> <p>The two year period for exceedances of a Limit to be rectified.</p> <p>Response</p> <p>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</p>	<p>The Applicant considers that the reference to "as soon as reasonably practicable" in the context of the definition of Mitigation Plan in paragraph 18 of Schedule 2 to the dDCO is appropriate. This is because it ensures that proportionate and reasonable steps are taken. "As soon as reasonably practicable" means that measures will be achieved in a time scale subject to constraints which may impose unreasonable or practical difficulties.</p> <p>The fundamental justification for the use of the phrase "as soon as reasonably practicable" is that the Applicant, whilst providing a far-reaching framework for control in the form of GCG, wishes to ensure that the growth at the airport and commerciality is considered in meeting its obligations. It is important to emphasise that the proviso applies the timescale for achieving the outcome, and not the outcome itself. This phrase must also be seen in the context of three further matters.</p>

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		<p>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.</p>	<p>First, the wider context of GCG must be considered. The structure of GCG means that exceedances of the Limit are capable of being prevented because of the Level 1 and Level 2 Thresholds. Ongoing monitoring against those Thresholds reduces the likelihood of exceedances.</p> <p>Second, Mitigation Plans (i.e., those which are defined to include reference to 'as soon as reasonably practicable') must be approved by the Independent Environmental Scrutiny Group. This provides independent oversight over ensuring all reasonable measures are included. In other words, the ESG would be able to refuse a plan where it did not consider the impact is proposed to be brought back below "as soon as reasonably practicable".</p> <p>Third, without the approval of a Mitigation Plan, the operator would not be permitted to declare further capacity thereby incentivising the operator to avoid or remove the exceedance of a Limit.</p> <p>The Applicant does not agree that the ability to appeal to the Secretary of State "weakens" the position of the ESG in circumstances where there is a disagreement about whether a plan is adequate. It is considered that where such a disagreement exists, the Secretary of State is the appropriate body to determine a dispute, and their decisions would provide future guidance for decisions of the ESG.</p>
3	<p>Noise and Vibration</p> <p>Green Controlled Growth</p>	<p>Issue</p> <p>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.</p> <p>Response</p> <p>It remains the view of the Host Authorities that Dacorum Borough Council ought to be a member of the ESG.</p>	<p>The Applicant has responded to the point raised in this response previously – please refer to pages 94-95 of the Applicant's Comments on Local Impact Reports (Hertfordshire County Council, Dacorum Borough Council, North Hertfordshire Council) [REP2A-006].</p>
4	Need Case	<p>Issue</p> <p>Government policy on MBU. Applicant suggestion that serving demand locally was also Government policy</p> <p>Response</p> <p>This was commented upon in TR020001- 001882 (ISH2-Posthearing submissions of Various Host Authorities) [REP3-093], where it was (a) noted that the 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</p>	<p>While it is true that London Luton Airport's catchment is expected to expand slightly in the future, it is important to understand why. It is not that demand in the areas around London Luton Airport is growing more slowly per se, it relates to the extent of constraint at other airports, which means that they are not able to satisfy their local demand, and, consequently, London Luton Airport increases its market share in those areas.</p> <p>The Applicant considers that the Airport will continue to primarily serve its primary catchment and satisfy demand within that area. As regards the position of MBU in relation to servicing local demand, the Applicant considers that it is simply logical that if Government is supportive of airports making best use of their existing runways, that this would be to serve demand that occurs within their local catchment areas. There are benefits to consumers from enabling them to use airports closer to their surface origin or destination and these are reflected in shorter surface access journeys and reduced costs.</p>

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		<p>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 (AS125). 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>	
5	Need Case	<p>Issue Applicant's suggestion that London airport system is not a single market</p> <p>Response 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 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 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>	<p>The Applicant considers that the London system is a highly complex market. It is not as simple as saying there is one single market. There are parts of the London market that are genuinely served by all London airports, primarily central London. However, each of the airports serving London also has clear patterns of local demand, even with differing airline products, whereby the individual airports serve the geographic locale that surrounds them.</p> <p>These individual catchments are clearly not discrete. They are competed by the other London airports to some degree and, indeed, airports further afield, but the Applicant retains the view that is a natural, local catchment for London Luton Airport. This is well illustrated in the Need Case [AS-125] for London Luton Airport on pages 80 – 82, in particular highlighted in Figures 5.10 and 5.11.</p>
6	Need Case	<p>Issue Balancing Government policies</p> <p>Response 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</p>	See response ID 4.

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7	Need Case	<p>Issue Capacity and Coordination</p> <p>Response It is not clear that this has been considered within previous agenda items as stated in this paragraph.</p>	<p>Issues around airport capacities have been addressed previously on pages 6-7 of 8.43 Response to Chris Smith Aviation Consultancy Limited - Initial Review of DCO Need Case for the Host Authorities [REP2-042] and in the Applicant's response to question NE.1.4 on page 3 of 8.73 Applicant's response to Written Questions - Need Case [REP4-059].</p>
8	Need Case	<p>Issue Other Airport Capacity</p> <p>Response It is not clear that this has been considered within previous agenda items as stated in this paragraph. In addition to being discussed in CSACL's report to the HAs [REP2- 057] (Para 3.44 et seq.), this is also covered in CSACL-003, Row 12, and has a material bearing on the timing of the environmental and economic impacts that would be generated by the proposed expansion.</p>	<p>Issues around airport capacities have been addressed previously on pages 6-7 of 8.43 Response to Chris Smith Aviation Consultancy Limited - Initial Review of DCO Need Case for the Host Authorities [REP2-042] and in the Applicant's response to question NE.1.4 on page 3 of 8.73 Applicant's response to Written Questions - Need Case [REP4-059].</p> <p>In relation to the question of timing, the Applicant notes that CSACL's view on timing remains within the demand forecast range put forward within the Need Case (page 115 to 116, [AS-125]) and, as such, the impact of timing on the environmental and economic impacts has been considered through sensitivity testing.</p>
9	Noise and Vibration	<p>2019 Baseline <i>Use within assessments</i></p> <p>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:</p> <p><i>"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.</i></p> <p><i>"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."</i></p>	<p>The Applicant's position on the use of the 2019 Actuals Baseline has been set out in many places, including in the Applicant's Post Hearing Submission, Issue Specific Hearing 3 [REP3-050].</p> <p>It is not agreed that the second method referenced is in direct contradiction with information within Chapter 16 of the Environmental Statement [REP1-003].</p> <p>The full section 6.2 has not been quoted and includes the following statement at paragraph 6.28:</p> <p><i>"As described previously 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. The only nuance to this is that whilst the identified significant effects on health and quality of life is unchanged by the 2019 Actuals or Consented baseline, a proportion of those identified effects during the night-time in Phase 1 and Phase 2b only (between 5 and 18%) could be considered 'new' effects as they would not have been exposed above the significant adverse effect level threshold in 2019 had the 2019 Consented baseline occurred in reality. Regardless of whether these effects are considered new or not, they occur over the same population and they are avoided through the provision of the full cost of noise insulation above the significant adverse effect level thresholds."</i></p> <p>This statement is in line with, and does not contradict, the paragraphs from Chapter 16 of the Environmental Statement [REP1-003] quoted by Luton Borough Council.</p>

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		<p>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].</p> <p>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:</p> <p><i>"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. ..."</i></p> <p>Sections 16.9.89 and 16.9.90 of the same document then state:</p> <p><i>"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.</i></p> <p><i>"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."</i></p> <p>The same statements are included for other assessment phases in Sections 16.9.114-115 and 16.9.138-139.</p> <p>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.</p>	<p>It is relevant to note that following the decision to approve the P19 planning application (21/00031/VARCON), the 2019 Actuals baseline is now compliant with the current daytime consented short-term noise limits and the 2019 Consented baseline sensitivity test is based on more stringent noise limits than those in the current consent.</p>

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10	Noise and Vibration	<p>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”.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p>Again, it is not agreed that paragraphs 6.2.8 and 6.2.4 of Applicant's Post Hearing Submission, Issue Specific Hearing 3 [REP3-050] contradict each other.</p> <p>Paragraph 6.2.4 relates only to the identification of EIA likely significant effects, i.e. the ‘first method’. Luton Borough Council have noted in paragraph 4.4 of [REP4-191] that <i>“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.”</i></p> <p>It is therefore correct to note that <i>“conclusions drawn from this comparison in terms of EIA likely significant effects ... are unchanged”</i> (paragraph 6.2.8).</p> <p>Population counts in the 2019 baseline are not relevant to the identification of likely significant effects as described above and are therefore not ‘incorrect’ for this purpose.</p> <p>The Applicant considers that the issue raised regarding the separate purpose and use of the sensitivity tests and the Noise Envelope Limits was answered within the Applicant's Response to Deadline 3 Submissions - Appendix H Hertfordshire County Council, Dacorum Borough Council and North Hertfordshire Council [REP4-103] pages 9-11.</p>
11	Noise and Vibration	<p>Applicant's Post Hearing Submission – Issue Specific Hearing 3 (ISH3) [REP3-050], Section 6.2.7.....The use of 2019 Actual baseline clearly goes beyond providing context within the ES and has been used to determine significant adverse effects.....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.</p> <p>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.</p>	<p>The Applicant disagrees that its approach conflicts with IEMA Guidance and reiterates that assessments have been made using both the 2019 Actuals and 2019 Consented baseline.</p> <p>The Applicant considers that the issues raised regarding compliance with UK aviation noise policy, the use of Limits based on Faster Growth and sharing of benefits were answered within the Applicant's Response to Deadline 3 Submissions - Appendix H Hertfordshire County Council, Dacorum Borough Council and North Hertfordshire Council [REP4-103] pages 9-11.</p>

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		<p>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.</p> <p>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.</p>	