

December 2023

# London Luton Airport Expansion

Planning Inspectorate Scheme Ref: TR020001

Volume 8 Additional Submissions (Examination)  
**8.137 Applicant's Post Hearing Submission - Issue  
Specific Hearing 10 (ISH10)**

Infrastructure Planning (Examination Procedure) Rules 2010

Application Document Ref: TR020001/APP/8.137

**The Planning Act 2008**

**The Infrastructure Planning (Examination Procedure) Rules 2010**

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

---

**8.137 Applicant's Post Hearing Submission - Issue Specific Hearing  
10 (ISH10)**

---

<b>Deadline:</b>	Deadline 6
<b>Planning Inspectorate Scheme Reference:</b>	TR020001
<b>Document Reference:</b>	TR020001/APP/8.137
<b>Author:</b>	Luton Rising

<b>Version</b>	<b>Date</b>	<b>Status of Version</b>
Issue 1	December 2023	Additional Submissions – Deadline 6

# Contents

---

<b>1</b>	<b>Introduction</b>	<b>1</b>
<b>2</b>	<b>Agenda Item 1: Welcome, introductions, arrangements for the Hearing</b>	<b>1</b>
<b>3</b>	<b>Agenda Item 2: Changes to the draft DCO</b>	<b>1</b>
<b>4</b>	<b>Agenda Item 3: Article 44 (interaction with LLAOL planning permission) and the granting of consent to increase the passenger cap to 19 million Passengers Per Annum (MPPA)</b>	<b>4</b>
<b>5</b>	<b>Agenda Item 4: Article 45 (application of the 1990 act)</b>	<b>5</b>
5.1	Article 45(1)	5
5.2	Article 45(2)-(5)	6
<b>6</b>	<b>Agenda Item 5: Schedules 1 and 2 – Authorised Development and requirements (excluding Part 3, Requirements 18 to 25)</b>	<b>8</b>
6.1	Requirement 5 / Phasing	8
6.2	Good Design	10
6.3	“Substantially in accordance with”	10
6.4	Miscellaneous matters	11
<b>7</b>	<b>Agenda Item 6: Part 3, Requirements 18 to 25 (Green Controlled Growth)</b>	<b>11</b>
<b>8</b>	<b>Agenda Item 7: Schedule 9 – Documents to be certified</b>	<b>13</b>
<b>9</b>	<b>Agenda Item 8: Consents, licences and other agreements</b>	<b>13</b>

## Tables

Table 1.1: Applicant’s Response to ISH10 Action Points

## 1 INTRODUCTION

- 1.1.1 This document contains Luton Rising's (a trading name of London Luton Airport Limited) (the Applicant) oral summary of evidence and post-hearing comments on submissions made by others at Issue Specific Hearing 10 (ISH10) held on 1 December 2023. Where the comment is a post-hearing comment submitted by the Applicant, this is indicated.
- 1.1.2 The Applicant has also included tabulated responses to each of the action points for Deadline 6 raised by the Examining Authority (ExA) for ISH10 published on 4 December 2023 and republished 5 December 2023 to reflect amended deadlines requested by the Applicant and agreed by the ExA. Please refer to Table 1.1 at the foot of this document. For the avoidance of doubt, Table 1.1 does not include action points assigned to Interested Parties.
- 1.1.3 This document uses the headings for each item in the agenda published for ISH10 by the ExA on 20 September 2023.

## 2 AGENDA ITEM 1: WELCOME, INTRODUCTIONS, ARRANGEMENTS FOR THE HEARING

- 2.1.1 The Applicant, which is promoting a proposal to expand London Luton Airport (the Proposed Development), was represented at ISH10 by Tom Henderson and Mustafa Latif-Aramesh of BDB Pitmans LLP, supported by Mark Day of Arup.

## 3 AGENDA ITEM 2: CHANGES TO THE DRAFT DCO

- 3.1.1 The Applicant noted that it has been maintaining a detailed **Summary of Changes to the Draft DCO**, the latest version of which was submitted for Deadline 5 [REP5-039], and then proceeded to outline the key changes since the previous Issue Specific Hearing (ISH) on the Draft DCO (ISH1 on 26 September 2023).
- 3.1.2 **Action point 2: Post hearing note to include Mr Henderson's summary of changes to the draft Development Consent Order (dDCO) from D3 to D5.**
- 3.1.3 Key changes to the version of the Draft DCO submitted at Deadline 3 [REP3-003] included:
- Schedule 2: standardisation of the usage of the terms "in accordance with" and "substantially in accordance with". The former is employed in relation to control documents finalised at the point of the consent (e.g. the **Design Principles [REP5-034]**, the **Code of Construction Practice [REP4-011]** and the **Strategic Landscape Masterplan [APP-172]**). The latter is employed in relation to outline control documents which are subject to secondary approvals in the post-consent phase.
  - Schedule 2, Requirements 23 and 24: amendments made to clarify the process in relation to the exceedance of a Level 2 Threshold and a Limit.
  - Amendments to address ExA's ISH1 and CAH1 supplementary questions.

### 3.1.4 Key changes to the version of the Draft DCO submitted at Deadline 4 [REP4-003] included:

- a. Article 2: revised definition of “LLAOL planning permission” to account for the granting of the P19 application, and new definition of “LLAOL section 106 agreement” added.
- b. Article 22(1): amended to confirm that the powers to fell or lop trees and shrubs are subject to the landscape and biodiversity management plan secured by Requirement 9 of Schedule 2.
- c. Article 44: new provision to abrogate the LLAOL section 106 agreement upon service of notice under article 44(1).
- d. Schedule 2, Requirement 5: renamed and expanded to address detailed design, phasing and implementation, with Requirement 7 merged into Requirement 5 (see further commentary under section 6 below).
- e. Schedule 2, Requirements 8-9: confirmation that the “specified period” for replacing vegetation is either 5 years or such other period specified in the landscaping and biodiversity management plan.
- f. Schedule 2, Requirement 28: new provision securing a ground noise management plan.
- g. Schedule 2, Requirements 29-33: amendments made to clarify that from the date notice is served in accordance with article 44(1), the airport must be operated in accordance with that plan, and that notice cannot be served until the plan is approved.
- h. Schedule 2, Requirements 34-35: new discretionary consultation mechanism included in response to comments from Interested Parties, in particular Buckinghamshire Council.
- i. Schedule 2, Requirement 37: new provision to secure a register of requirements.
- j. Schedule 8: insertion of protective provisions for Cadent Gas (agreed by the parties) and National Highways (representing the Applicant’s preferred wording).
- k. Schedule 9: amendments to the listing of certified documents, in response to the Examining Authority’s feedback (see further section 7 below).

### 3.1.5 Key changes to the version of the Draft DCO submitted at Deadline 5 [REP5-003] included:

- a. Article 42: removal of the disapplication of provisions of the Water Resources Act 1991, following engagement with the Environment Agency.
- b. Schedule 2, Requirements 22 and 24: amendments made reduce the transition period for the establishment of the Green Controlled Growth regime.
- c. Schedule 8: insertion of protective provisions for the benefit of local highway authorities and local drainage authorities.

- 3.1.6 In relation to the local highways protective provisions, the Applicant explained that these serve as a 'backstop' to ensure local highway authority interests are adequately protected, but that the Applicant recognises that there may still be a need for highways agreements under section 278 of the Highways Act 1980, and the protective provisions allow for this.

## 4 AGENDA ITEM 3: ARTICLE 44 (INTERACTION WITH LLAOL PLANNING PERMISSION) AND THE GRANTING OF CONSENT TO INCREASE THE PASSENGER CAP TO 19 MILLION PASSENGERS PER ANNUM (MPPA)

- 4.1.1 The Applicant provided an update on how the recent granting of consent to increase the airport's passenger cap to 19 mppa ('the P19 permission) affects the DCO.
- 4.1.2 The Applicant explained that at Deadline 4 amendments were made to the definition of "LLAOL planning permission", and a definition of "LLAOL section 106 agreement" was added, to account for the granting of the P19 permission. This permission has not yet been implemented and therefore it is necessary for the DCO to include for either eventuality. The P19 permission does not affect the transition mechanism in the DCO from the Town and Country Planning Act (TCPA) 1990 regime to the DCO regime. The abrogation of the P19 s106 agreement has also now been provided for in Article 44.
- 4.1.3 The Applicant noted that there are two other DCO drafting updates associated with the transition between the existing TCPA consent (be that 18 mppa or 19 mppa) and the DCO operating regime.
- 4.1.4 Firstly, as noted during ISH8 and ISH9, the Applicant has decided to carry forward some additional noise controls from the P19 noise management plan into a new Air Noise Management Plan (ANMP). This will be secured by an amended Requirement 26 in the Deadline 7 version of the Draft DCO which will:
- a. move the scheduled movement cap secured by Requirement 26 in the Deadline 5 **Draft DCO [REP5-003]** to the ANMP; and
  - b. add additional noise controls, including: a night-time quota based on a quota count system, a night-time ban on aircraft with a quota count of 2 or more, track violation measures and departure noise violation limits.
- 4.1.5 Secondly, following engagement with Luton Borough Council and the airport operator, the Applicant has recognised that there is potential for some necessary works under the extant permissions to be either not yet delivered, or in the course of delivery, at the point Article 44(1) notice is served. The Applicant is going to bring forward further drafting at Deadline 7 to address this point. Article 44 will be amended so that the operative part of the TCPA permission and related conditions which permit and secure those works will be retained for the period required.
- 4.1.6 In response to the ExA's questions, the Applicant confirmed that it does not consider there to be a potential for any "uncontrolled" elements of airport operation in the period between service of Article 44(1) notice, and the establishment of the DCO operating regime. The DCO secures a raft of operational management plans which must be approved before, and will apply from, the point of Article 44(1) notice being served. The transition period to the GCG noise regime is now immediate; the transition to the air quality, surface access and carbon elements of GCG would be short, with no foreseeable

exceedance of any GCG Limit due to the time taken for the airport to expand its passenger throughput.

4.1.7 **Post hearing note:** in response to comments and queries made during ISH10 about the status of community funding as a result of the transition between the TCPA and DCO regime, the Applicant has set out its position at in Table 1.1 in response to the ExA's **Action point 4: Confirm status of existing community fund on serving of Article 44 and the loss of £1million due to implementation of the 19 million passengers per annum (mppa) consent.**

4.1.8 **Action point 6: Applicant to confirm whether Framework Travel Plan can be updated to reflect Travel Plan conditions within 19mppa consent.**

## 5 **AGENDA ITEM 4: ARTICLE 45 (APPLICATION OF THE 1990 ACT)**

### 5.1 **Article 45(1)**

5.1.1 The ExA sought further clarification regarding the effect of Article 45(1) on the extent of operational land, given concerns expressed that it may extend permitted development rights for airport development beyond land identified for airport expansion (e.g. extending into Wigmore Valley Park).

5.1.2 The Applicant confirmed that this is not the effect of Article 45(1) when read alongside section 264 of the TCPA 1990. **Post-hearing note:** the paragraphs below set out the full legal explanation / justification which the Applicant summarised at ISH 10, and which serves as the response to action point 7.

5.1.3 **Action point 7: Applicant to clarify why operational land permitted development rights do not apply to Wigmore Valley Park and consider inclusion of a 'carve out' or plan which would explicitly exclude the park from Article 45.**

5.1.4 The Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO) provides for permitted development rights in respect of "operational land". This includes land in relation to statutory undertaker's utility apparatus, but also operational land forming part of an airport (see Part F of Part 8 of Schedule 2 to that GDPO).

5.1.5 Land is not treated as "operational land" automatically under the TCPA 1990. Section 264(1) of the TCPA 1990 confirms that, unless one of the exceptions in subsections (3) or (4) applies, land is to be treated as not being operational land, in circumstances where an interest in land is held by statutory undertakers for the purpose of carrying on their undertaking and (a) the interest was acquired by them on or after 6 December 1968; or (b) it was held by them immediately before that date but the circumstances were such that the land did not fall to be treated as operational land for the purposes of the Town and Country Planning Act 1962.

5.1.6 The default position, therefore, is that land in respect of which interests may be acquired in relation to the airport or to accommodate diverted or relocated apparatus as a result of works carried out in connection with the Proposed



Development, would not be treated as operational land (see section 264(2) of the TCPA 1990), since those interests would necessarily have been acquired after 6 December 1968 (i.e. caught by (a) above).

- 5.1.7 As noted, there are exceptions to the default position in the TCPA 1990. Section 264(3) of the TCPA is the relevant provision in this case. It provides an exception where there is “specific planning permission” for development, and that development involves use for the purpose of carrying out the statutory undertaking.
- 5.1.8 Importantly, development consent conferred by an Order under the Planning Act 2008 does not qualify as “specific planning permission” for the purposes of section 264(3). It is precisely for this reason that Article 45(1) clarifies that development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the TCPA 1990.
- 5.1.9 The effect of this drafting is that land within the Order limits on which the DCO authorises airport development, or on which it authorises development to accommodate diverted or relocated apparatus, is capable of constituting “operational land” for the purposes of the TCPA 1990, and thus would attract permitted development rights in the same way it would if it had been consented under the TCPA 1990.
- 5.1.10 Article 45(1) would not have the effect of extending airport permitted development rights to all land within the Order limits as the land must also pass the test set out in section 264(3) of the TCPA 1990. It would only apply to land in which the DCO authorises airport development. It would not, for instance, apply to the future Wigmore Valley Park because the DCO does not authorise any airport development on that land.
- 5.1.11 The Applicant noted that the Host Authorities confirmed that this provision is well precedented, that they agreed with the Applicant’s interpretation of its effect, and that they have no concerns with its use on this project.
- 5.1.12 The Applicant agreed that in the next iteration of the DCO (Deadline 7) it will consider clarificatory drafting to confirm the effect of the provision and allay any concerns of Interested Parties.

## **5.2 Article 45(2)-(5)**

- 5.2.1 The Applicant began by confirming that, for the avoidance of doubt, there is a clear difference between the effect of Articles 44(2) and 45(2). Article 44(2) extinguishes the existing TCPA permission and associated section 106 agreement once Article 44(1) notice is served. Article 45(2) does not modify or disapply the Green Horizons Park permission at all [ref 17/02300/EIA], but instead deals with the interface between TCPA permissions (including Green Horizons Park) and the DCO.
- 5.2.2 The Applicant explained that where development takes place under one permission, whether subsequent overlapping permissions can be lawfully implemented depends on what is physically possible.

- 5.2.3 There are two scenarios which Article 45(2) addresses. Firstly, where planning permissions (including Green Horizons Park) conflicts with the exercise of DCO powers, Article 45(2)-(3) ensures that developments under those planning permissions can proceed without the risk of enforcement. Secondly, where a development under a planning permission conflicts with the DCO, Article 45(4) provides that development under DCO can proceed without risk of enforcement.
- 5.2.4 The Applicant highlighted that Luton Rising is also promoter of Green Horizons Park [ref 17/02300/EIA] and so it is important for it to retain the ability to implement both that scheme and the DCO in parallel.
- 5.2.5 The drafting of Article 45(2)-(5) is intended to address any potential uncertainty that may result from the Supreme Court's recent decision in *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30. Whilst the drafting of Article 45(2)-(5) is bespoke to this DCO to address particular existing planning permissions which are relevant to the Proposed Development, the Applicant noted that there is precedent for it within the Network Rail (Cambridge South Infrastructure Enhancements) Order 2022. **Post-hearing note:** the Applicant directs the ExA to , where a copy of the Network Rail (Cambridge South Infrastructure Enhancements) Order 2022 can be obtained. See in particular Article 35(5)-(10) of the Order which has the same effect as the Applicant's proposed Article 45(2)-(5).
- 5.2.6 **Post-hearing note:** the Applicant draws the ExA's attention to the **Explanatory Memorandum [REP5-005]** which contains further commentary on the need for and purpose of Article 45(2)-(5) at paragraphs 3.172-3.176, and the **Applicant's Post Hearing Submission for Issue Specific Hearing 1 [REP3-048]** which contains further commentary at paragraphs 4.16.13-4.6.18.
- 5.2.7 For completeness, Article 45 also makes clear that existing permitted development rights are not affected by the DCO. This is considered appropriate given the airport should not be excluded from making use of those permitted development rights simply because a DCO is in place.
- 5.2.8 The Host Authorities noted that they do not object to Article 45 in principle, and understand why it has been included, but their concern is to ensure that there are no unintended consequences as far as enforcement is concerned.
- 5.2.9 The Host Authorities explained that there may be a gap in the drafting and the main point causing concern is in relation to paragraph (2)(c) where it states that any inconsistent conditions cease to have effect from the date the authorised development is begun. The point at which enforcement action arises is the point the authorised development is begun but the Order does not define begun but refers to section 155 of the Planning Act 2008 which says that development begins when a material operation is carried out which is a very broad definition. There is the potential that conditions can therefore be rendered unenforceable at quite an early stage of the process. The Host Authorities invited the Applicant to consider this point. **Post-hearing note:** the Applicant will review this as part of its preparations for an updated DCO at Deadline 7.
- 5.2.10 The ExA noted that Article 45 is a "powerful" article with the potential for non-compliance with a number of conditions related to Green Horizons Park [ref

17/02300/EIA]. As Green Horizons Park is EIA development it is likely that some of the conditions will be mitigating significant effects, which give rise to the potential that such conditions are not complied with.

- 5.2.11 **Action point 9: Provide a more detailed explanation or revised drafting of Article 45 to address concerns regarding the risk that mitigation for significant effects would not be implemented due to conflicts under Article 45.**
- 5.2.12 **Post-hearing note:** the Applicant does not consider that Article 45 will result in unmitigated effects, because any Green Horizons Park development that cannot be implemented will be because of development under the DCO which contains its own mitigation for adverse effects. The Applicant notes hearing action point 9 on this matter and will provide a more detailed response at Deadline 7.
- 5.2.13 The ExA queried whether it would be better to address the overlap / conflict between the two proposals directly in the DCO. The Applicant confirmed that it is not directly modifying the Green Horizons Park permission within the DCO as Luton Rising wishes to preserve the ability to implement Green Horizons Park in full. The Applicant noted that Luton Rising has put in place a separate workstream to consider the need for any modifications to the Green Horizons Park permission as a result of the DCO, and to ensure that the Green Horizons Park permission can be commenced before it lapses in June 2024.
- 5.2.14 The Host Authorities noted that currently Article 45(2)-(5) applies “automatically” and queried whether it could be qualified to include an additional safeguarding mechanism requiring e.g. the local planning authority to certify a conflict in respect of which Article 42(2)-(5) takes effect. **Post-hearing note:** the Applicant will give this proposal further consideration and will provide an update at Deadline 7.

## **6 AGENDA ITEM 5: SCHEDULES 1 AND 2 – AUTHORISED DEVELOPMENT AND REQUIREMENTS (EXCLUDING PART 3, REQUIREMENTS 18 TO 25)**

### **6.1 Requirement 5 / Phasing**

- 6.1.1 The Applicant outlined the changes to Requirements 5 and 7 which were both updated at Deadline 4. Requirement 7 has been merged into an amended Requirement 5 (now titled “Detailed design, phasing and implementation”). The Applicant noted that the phrase “part”, utilised in Requirement 5, is conventionally used in DCO drafting but Requirement 1(2) defines a “part” as meaning a “phase” or a “stage” of development.
- 6.1.2 Amended Requirement 5 references the **Scheme Layout Plans [AS-072]** (now to be certified by Schedule 9) and sets out the detailed information that would be required for an application under that Requirement to provide sufficient clarity to the relevant planning authorities as to the scope/phase of works contained in the application, and how they relate to the Scheme Layout Plans

and any DCO works previously authorised. The Applicant emphasised that it did not wish the DCO to bind it, from the outset, to implementing the DCO in prescribed phases.

- 6.1.3 The Applicant highlighted that Requirement 5 is now much more prescriptive about the information requirement to be included in an application for detailed approval and specifically requires that the phase of works for which detailed approval is being sought must be:
- a. in accordance with the design principles;
  - b. within the limits shown on the works plans;
  - c. within the parameters set out in Requirement 6;
  - d. not give rise to any materially new or materially different environmental effects in comparison with those reported in the Environmental Statement.
- 6.1.4 Provision has also been made in Requirement 5 regarding the programming of a phase of works, notice of the start and conclusion of the phase of works, and the effect of those works on airport capacity. Requirement 7 has been deleted as it is now superseded by revised Requirement 5(5).
- 6.1.5 The Applicant made clear that upon receipt of a Requirement 5 application, additional information can be requested by the relevant local planning authority under Requirement 36. The relevant local planning authority can refuse an application if it reasonably considers that the various elements of Requirement 5 are not met.
- 6.1.6 The ExA queried whether it was sufficiently clear, as part of the phased approach being sought by the Applicant, that mitigation would be delivered at the appropriate time. The ExA drew attention to the 18 mppa permission [12/01400/FUL as varied by 15/00950/VAR] achieving faster than expected growth.
- 6.1.7 The Applicant highlighted that Requirement 5 now contains a criterion that a phase of growth must not give rise to materially new or materially different environmental effects in comparison with those reported in the Environmental Statement. Furthermore, unlike the 18 mppa TCPA permission, growth under the DCO would be subject to the **Green Controlled Growth Framework [REP5-022]**. The rationale for the GCG Framework is to bind the DCO to specific environmental outcomes, to negate the need for any interim passenger caps. The Applicant noted that the “purest” form of green controlled growth would have no passenger caps. For certainty, the Applicant had settled upon an overall cap of 32 mppa, but the effect of GCG is that no interim caps are required below that level.
- 6.1.8 The Host Authorities queried, in the context of phasing, whether the relationship between the discharge of different Requirements under Schedule 2 was clear. The Applicant confirmed that it is not seeking to constrain itself so that every Requirement has to be discharged in relation to that part (e.g. a construction management plan could be discharged once to cover multiple phases of growth). Furthermore, new Requirement 37 commits to a register of

requirements, which provides an ability to track what has been delivered and discharged.

6.1.9 **Action point 11: Confirm position on Requirement 5 following host authorities' comments and provide clarity on which management plan applies to which work area.**

6.1.10 **Post-hearing note:** the Applicant will consider for Deadline 7 whether additional drafting could assist clarifying the relationship between the discharge of related Requirements.

## 6.2 Good Design

6.2.1 The Applicant explained that principles of “good design” would be achieved by the **Design Principles [REP5-034]** which were refined and expanded at Deadline 5. The Design Principles are secured by Requirement 5, and are a well-precedented mechanism to securing the detailed design of an “outline” form of DCO. If the local planning authority considers that the detailed design doesn't comply with the design principles, then it is entitled to reject the application or request more information.

6.2.2 In response to comments and questions on the “design vision”, the Applicant noted that section 2.2 of the Design Principles is titled “Design Quality” and is intended to specifically address this matter. Section 4.4 contains principles specifically applicable to the terminal. The Applicant emphasised that it is receptive to further comments and discussions with local planning authorities on the content of the Design Principles, to ensure they are fit for purpose.

6.2.3 **Action point 12: LBC to provide comments in writing on the design review panel. Applicant to respond in writing on LBC comments on its potential attendance at a design review panel.**

6.2.4 **Action point 13: Review the Design Principles Document in light of the discussions at ISH8 and the comments made by Mr Gurtler at this Hearing including the potential for including a mechanism for design review in the pre-discharge process.**

## 6.3 “Substantially in accordance with”

6.3.1 Under agenda item 2 (see above) the Applicant confirmed that it has now adopted a consistent use of the term “substantially in accordance with” for outline control documents.

6.3.2 National Highways noted its concern with the use of “substantially in accordance with”, in circumstances where it considers the outline document is not sufficiently detailed to allow this level of flexibility. In this regard it considers that that the **Outline TRIMMA [REP5-041]** is not sufficiently advanced or detailed, and so (in its view) a specific Requirement (e.g. a Grampian condition) may be needed to set trigger points to address impacts on junction 10 of the M1.

6.3.3 The Applicant will await, and in due course comment upon, the drafting National Highways proposes to submit to the ExA on this matter. In the meantime, the

Applicant commented at ISH10 that it disagrees with National Highways on this matter. The **Outline TRIMMA [REP5-041]** is sufficiently detailed and clear, and provides for an adaptive form of mitigation under which the Applicant will bring forward interventions at the appropriate time to mitigate its impacts on junction 10. The Applicant does not consider that a Grampian condition is necessary or appropriate in this case. The Applicant will continue to engage with National Highways on these matters.

## 6.4 Miscellaneous matters

- 6.4.1 Buckinghamshire Council welcomes the “discretionary consultee” mechanism under Requirement 35 but wish for it to include a minimum consultation period to ensure consultees have sufficient time to respond. The Applicant noted it is considering a minimum consultation period but the current drafting had intentionally left it as a matter for the discretion of the discharging authority. **Post-hearing note:** the Applicant will provide an update on this at Deadline 7.
- 6.4.2 The ExA asked how condition 19 on the carbon reduction strategy in the P19 permission is carried forward into the DCO. The Applicant explained that this is replicated by Green Controlled Growth, under which there is an annual verification of emissions that is reported annually, with a 5 yearly review mechanism. In addition, Requirement 32 secures a Greenhouse Gas Action Plan. The **Outline Greenhouse Gas Action Plan [APP-081]** plan states at paragraph 4.5.1: *“The Greenhouse Gas Action Plan will be reviewed and refreshed periodically (in line with UK Government carbon budget periods) and will set out how emissions across all aspects of aircraft movements, airport operations and surface access will be monitored, reported and managed in line with existing legislation, policies and targets”*.
- 6.4.3 The Applicant noted that in relation to the ExA’s ISH8 query on overflights, this could be accounted for by the use banded contours. **Post-hearing note:** hearing **action point 10** requested a written response on this matter and this is signposted to in Table 1.1 below.
- 6.4.4 The Environment Agency (EA) submitted a written response dated 28 November 2023 **[EV17-002]** in lieu of appearing at the hearing. The EA has requested to be a consultee on the **Code of Construction Practice [REP4-011]**, and has also requested some amendments be made to Requirements concerning consultation and the time period for doing so. **Post-hearing note:** hearing action 1 requested a response to the EA’s comments, which the Applicant has set out in Table 1.1 below.

## 7 AGENDA ITEM 6: PART 3, REQUIREMENTS 18 TO 25 (GREEN CONTROLLED GROWTH)

- 7.1.1 The Applicant provided a brief overview of the changes to the drafting of the Green Controlled Growth requirements on the basis that this topic had been covered in detail at ISH9.



- 7.1.2 The Applicant explained that the Transition Period had been removed in relation to noise, and that the monitoring period had been amended for surface access, air quality and carbon so that it begins on 1 January following the date of service of article 44(1) notice, at which point the Green Controlled Growth process will apply in full. A slots allocation expert has been included on the Environmental Scrutiny Group (ESG). Previously a review would be required after the end of the Transition Period, but this has now been replaced with a requirement to carry out that review three years following service of the Article 44(1) notice.
- 7.1.3 The Host Authorities commented that the consultation period in Requirement 17 of Schedule 2 to the DCO has been extended from 21 to 28 days but noted that the drafting does not seem to be as clear as it could be on the obligation to consult. A key issue for the Host Authorities relates to enforcement (Requirement 40 of Schedule 2). They consider that the provision should be made for enforcement where a Level 2 Plan / Mitigation Plan is not produced in the required timescales. Furthermore they commented that there does not appear to be a remedy where there is a persistent breach of limits.
- 7.1.4 The Applicant stated that it can provide further reassurance on the requirement to consult and would have due regard to those responses.
- 7.1.5 **Action point 15: Review whether GCG drafting around deemed consent should be edited to make clearer the obligation to consult.**
- 7.1.6 **Action point 16: Applicant to respond to whether enforcement should be allowed for breach of a Level 2 plan.**
- 7.1.7 **Post-hearing note:** hearing action points 15 and 16 relate to Requirement 17 consultation and enforcement where plans are not produced on time, and are responded to in Table 1.1 at the end of this document.
- 7.1.8 On the query concerning remedies for persistent breaches of GCG Limits, this is not considered necessary. The GCG Framework is intended to be self-enforcing in respect of environmental Limits being exceeded, and requires proactive management of environmental impacts to make persistent breaches unlikely. The statutory enforcement regime under the Planning Act 2008 is the appropriate route to address situations where persistent breaches are due to the airport operator not implementing mitigation measures as agreed with the ESG, and there is also a significant commercial incentive for the airport operator to avoid persistently being in breach of a Limit as this will constrain airport growth. Please see Section 3.8 of the **Applicant's Post Hearing Submission - Issue Specific Hearing 9 (ISH9) [TR020001/APP/8.136]**.
- 7.1.9 The ExA asked why it is only the **Green Controlled Growth Framework [REP5-022]** that is a certified under Schedule 9, and asked if the **GCG Explanatory Note [REP5-020]** could be merged into the **Green Controlled Growth Framework [REP5-022]** as it is very helpful in explaining the wider context. **Post-hearing note:** the Applicant has responded to this matter in Table 1.1 below in response to hearing **action point 17: Consider whether GCG Framework Explanatory Note could become incorporated into the main GCG Framework document.**

## 8 AGENDA ITEM 7: SCHEDULE 9 – DOCUMENTS TO BE CERTIFIED

- 8.1.1 The ExA noted that the schedule of documents to be certified at Schedule 9 to the **Draft DCO [REP5-003]** is now more legible and easier to navigate but asked why the Applicant it is using its own document references, rather than the examination library. The Applicant explained that documents to be certified contain the Applicant's reference, but do not contain the examination library references. The examination library would eventually be removed from the Inspectorate's website and would not be publicly available. Since those references would not "endure", it was not considered appropriate to contain them in a DCO which would guide development for two or more decades.
- 8.1.2 In response to comments from the Host Authorities, the Applicant noted that it is not certifying the whole of the application. It is only certifying those documents which have a specific reference in the DCO, and therefore must be read in conjunction with the DCO. The length of Schedule 9 is largely attributable to the Environmental Statement being sub-divided into a large number of documents, a function of the scale of the application.
- 8.1.3 The Applicant confirmed (at the Host Authorities' suggestion) that it would consider the value of including a column to link a certified document to the DCO provision to which it relates, but cautioned that it might conclude this to be a disproportionately excessive exercise, particularly if the ultimate conclusion was that a certified document was arguably relevant to "all provisions".
- 8.1.4 **Action point 18: In Schedule 9 consider the practicability of stating what provisions of the draft DCO each certified document responds to and why is on the list.**

## 9 AGENDA ITEM 8: CONSENTS, LICENCES AND OTHER AGREEMENTS

- 9.1.1 The Applicant provided an overview of the section 106 agreement including an update on the indicative timescales for completion. The Applicant explained that at present there is proposed to be a single agreement with multiple signatories, but this may change subject to ongoing negotiations.
- 9.1.2 Noting the need to secure the obligations contained in the draft section 106 agreement by the end of the examination, the Applicant confirmed that (as a fall-back) it is developing in parallel a mechanism to secure the obligations unilaterally, either through unilateral undertakings or additional securing mechanisms within the DCO. The Applicant's firm desire, however, remains to secure obligations by agreement.
- 9.1.3 An update in writing was requested by the ExA. **Post-hearing note: this is addressed in a separate response to action point 19: provide a summary of the s106 heads of terms.**



- 9.1.4 The ExA asked if it is possible to secure compensation policies by a DCO requirement rather than through a section 106 agreement. The Applicant will give further consideration to this point as negotiations unfold.
- 9.1.5 The ExA noted that unilateral undertakings are normally submitted because it has not been possible to reach agreement. The ExA asked what weight could be afforded to obligations in a unilateral undertaking versus obligations in a section 106 agreement, because of disagreement between the parties. **Post-hearing note:** to expand on the answer given at the hearing, the Applicant's view is the equal weight can be attached to obligations secured by agreement or unilaterally and noted that it may agree on points of principle with the Host Authorities but that governance might mean it cannot be signed in time.
- 9.1.6 Buckinghamshire Council noted that it is not a signatory to the section 106 agreement, but that it would like to understand how matters that affect it – such as the **Employment and Training Strategy [APP-215]** – are dealt with. The Applicant confirmed that it would address this as part of ongoing engagement with Buckinghamshire Council.
- 9.1.7 The Applicant confirmed that it would review the **Consents and Agreements Position Statement [AS-070]** and provide any updates at Deadline 7.
- 9.1.8 **Action point 20: Review and update if necessary Consents and Agreements Position Statement [AS-070].**
- 9.1.9 **Action point 21: Discussion with Buckinghamshire regarding Employment and Training Strategy [APP-215] component of s106.**

Table 1.1: Applicant's Response to ISH10 Action Points (NB: Any missing action below was addressed to another third party)

Action	Description	When	Applicant's response
1	Respond to the comments submitted by the Environment Agency in lieu of attending the Hearing.	Deadline 6	<p>The Environment Agency (EA) submitted four comments on Schedule 2 of the Draft DCO by letter dated 28 November [EV17-002], which are set out below followed by the Applicant's response.</p> <p><b><i>Requirement 7 – Code of Construction Practice: the EA wishes to be named as a consultee for the discharge of this requirement where it is applicable to their remit</i></b></p> <p>Within the <b>Code of Construction Practice (CoCP) [REP4-011]</b> specific provision is made for consultation or engagement with parties where relevant to the management plan in question. In relation to the EA's involvement, by way of example see paragraphs 15.1.4 (materials management plans), 15.3.3 (remediation strategy), 15.4.1 (groundwater contamination) and flood risk (18.7.1). The commitments within the <b>CoCP [REP4-011]</b> are secured by Requirement 7. Rather than naming the EA in Requirement 7 itself, the Applicant considers it clearer to specify directly within the CoCP the EA's role in relation to construction matters, and welcomes the EA's engagement on this. The Applicant is reviewing whether the CoCP to consider whether additional reference to the EA's involvement is appropriate, and will provide an update at Deadline 7.</p> <p><b><i>Requirement 35(1)(a) – Applications made under requirements: the EA considers that it should be an obligation, not a discretion, to consult the bodies listed in Requirement 34 where the relevant conditions are met</i></b></p>

Action	Description	When	Applicant's response
			<p>The Applicant will give consideration to whether this amendment is appropriate for its Deadline 7 submission of an updated Draft DCO and will provide a further substantive response at that point.</p> <p><b>Requirement 35(3) – Deemed consent:</b> <i>the EA considers this to be a disproportionate outcome, and considers that if there are comments from a consultee body that considers it likely that the subject matter of the application is to give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement, then the application should be taken to have been refused by the discharging authority at the end of that period.</i></p> <p>The Applicant does not consider that a “deemed refusal” provision of this nature is appropriate in the context of a Nationally Significant Infrastructure Project that has already been granted development consent. The concept of “deemed approval” has been endorsed by the Secretary of the State in previous DCO decisions as balancing the interests of Interested Parties with the public interest in expeditious delivery of nationally significant infrastructure. The Applicant would highlight that Requirement 34 of Schedule 2 allows for the Applicant and the discharging authority to agree a period of longer than 8 weeks to decide an application.</p> <p><b>Requirement 36 – Further information:</b> <i>the EA states that “the draft states 10 business days, we wish to challenge that this should be 20 business days (15 business days, in addition to the 5 allocated to the LPA to issue the consultation) to better align with the Development Management Procedure Order 2015”</i></p>

Action	Description	When	Applicant's response
			<p>The Applicant is giving further consideration to the timescales in Requirement 37 ahead of its submission of an updated Draft DCO at Deadline 7, and will provide a further substantive response at that point.</p>
2	<p>Post hearing note to include the Applicant's summary of changes to the draft Development Consent Order (dDCO) from D3 to D5.</p>	Deadline 6	<p>Please refer to section 3 of this document.</p>
4	<p>Confirm status of existing community fund on serving of Article 44 and the loss of £1million due to implementation of the 19 million passengers per annum (mppa) consent.</p>	Deadline 6	<p>Community First accrues funding at a rate of £1 for each passenger above the existing TCPA passenger cap at the point Article 44 notice is served – i.e. if the permitted cap at that point is 18 mppa, Community First will kick in above 18 mppa. Equally if the permitted cap is 19 mppa at that point (i.e. the P19 permission has been commenced), Community First will kick in above 19 mppa.</p> <p>Both the current 18 mppa section 106 agreement, and the P19 section 106 agreement, provide for a Community Fund to which the current operator commits £100,000 each year. The Community Fund as secured by the current 18 mppa and P19 section 106 agreements would continue until Article 44 notice is served.</p> <p>It is correct to observe that Article 44 notice may be served before the existing TCPA passenger cap has been reached, although in practice any gap would be expected to be small.</p>

Action	Description	When	Applicant's response
			On the service of Article 44 notice, the Community Fund secured by the existing TCPA section 106 agreement would fall away by reason of that agreement being abrogated by Article 44 of the DCO. However, the DCO section 106 agreement would become "active" from that point. The DCO section 106 replicates the Community Fund, with the same annual contribution of £100,000 from the current operator. Consequently there would be no temporary fall in community funding provided by the airport, and there would be a substantial uplift in such funding once growth authorised by the DCO is realised.
6	Applicant to confirm whether Framework Travel Plan can be updated to reflect Travel Plan conditions within 19mppa consent.	Deadline 7	The Applicant will respond to this action at Deadline 7.
7	Applicant to clarify why operational land permitted development rights do not apply to Wigmore Valley Park and consider inclusion of a 'carve out' or plan which would explicitly exclude the park from Article 45.	Deadline 6	Please refer to section 5.1 of this document, which explains why operational land permitted development rights will not apply to Wigmore Valley Park. In the next iteration of the Draft DCO (Deadline 7) the Applicant will consider clarificatory drafting to Article 45(1) to confirm the effect of the provision and allay any concerns of Interested Parties.
9	Provide a more detailed explanation or revised drafting of Article 45 to address concerns regarding the risk that mitigation for significant effects would not be implemented due to conflicts under Article 45.	Deadline 7	The Applicant will respond to this action at Deadline 7.
10	Applicant provided an oral response to comments on overflights raised in ISH9 and confirmed that a written update on the precise number of	Deadline 6	Please refer to the Applicant's response to ISH9 Action 22 in the <b>Applicant's Post Hearing Submission - Issue Specific Hearing 9 (ISH9) [TR020001/APP/8.136]</b> .

Action	Description	When	Applicant's response
	overflights would be provided as figures presented were banded.		
11	Confirm position on Requirement 5 following host authorities' comments and provide clarity on which management plan applies to which work area.	Deadline 6	Please refer to section 6.1 of this document. The Applicant is giving consideration to how further clarity could be provided about the relationship between Requirements, ahead of its submission of an updated Draft DCO at Deadline 7. It will provide a further substantive response at that point.
12	LBC to provide comments in writing on the design review panel. Applicant to respond in writing on LBC comments on its potential attendance at a design review panel.	Deadline 7 (Applicant)	The Applicant will respond to this action at Deadline 7.
13	Review the Design Principles Document in light of the discussions at ISH8 and the comments made by Mr Gurtler at this Hearing including the potential for including a mechanism for design review in the pre-discharge process.	Deadline 7	The Applicant will respond to this action at Deadline 7.
15	Review whether GCG drafting around deemed consent should be edited to make clearer the obligation to consult.	Deadline 6	The Applicant will bring forward a drafting amendment to the Draft DCO at Deadline 7 to clarify the obligation to consult.
16	Applicant to respond to whether enforcement should be allowed for breach of a Level 2 plan.	Deadline 6	The Applicant's understanding of the Host Authorities' comment on this matter was whether the DCO drafting should include that the Environmental Scrutiny Group can approach Luton Borough Council to seek enforcement against the airport operator for failing to produce a Level 2 Plan / Mitigation Plan in the required timescales.

Action	Description	When	Applicant's response
			The Applicant will consider additional drafting to address this point and will provide a further update at Deadline 7.
17	Consider whether GCG Framework Explanatory Note could become incorporated into the main GCG Framework document.	Deadline 6	<p>The Applicant is content to “certify” the <b>GCG Explanatory Note [REP5-020]</b> so that it remains available for inspection when the GCG regime is being implemented, recognising that the <b>GCG Explanatory Note [REP5-020]</b> assists with understanding and is already “signposted to” in the <b>GCG Framework [REP5-022]</b>.</p> <p>The Applicant is of the view that the <b>GCG Explanatory Note [REP5-020]</b> should remain as a separate document (i.e. not incorporated directly into the GCG Framework) so that the context and status of the document is clear into the future having regard to the elements “secured” under Schedule 2 of the DCO.</p>
18	In Schedule 9 consider the practicability of stating what provisions of the draft DCO each certified document responds to and why is on the list.	Deadline 7	The Applicant will respond to this action at Deadline 7.
19	Provide a summary of the s106 heads of terms. Local Authorities to provide a response on their current position on the s106.	Deadline 6	The Applicant's summary has been submitted separately at Deadline 6 as document <b>TR020001/APP/8.141</b> .
20	Review and update if necessary <b>Consents and Agreements Position Statement [AS070]</b> .	Deadline 7	The Applicant will respond to this action at Deadline 7.
21	Discussion with Buckinghamshire regarding <b>Employment and Training Strategy [APP-215]</b> component of s106.	Deadline 7	The Applicant will address this action at Deadline 7.