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8th December 2023 (before 23:59)

London Luton Airport Way Luton

By portal upload only to the Planning Inspectorate

My Ref.: F: Planning\Development Management\Luton.

Application by London Luton Airport Limited for an Order Granting Development Consent for the London Luton Airport Expansion project. Notification of decision to accept an application for Examination for an Order Granting Development Consent

Deadline 6: The Chilterns Conservation Board (CCB)

The CCB is grateful to follow up, after Issue Specific Hearing 8 (29th November 2023) with comments submitted on.

- **Section 1- Summary of CCB's oral evidence following ISH 8.**
- **Section 2- The Examining Authority's Action Points following ISH 8.**

1.0 Section 1 - CCB's summary of oral points following ISH 8 on Environmental Matters (landscape, and visual impacts, including AONB).

1.1 For ease of reference, please note our key points, following the oral hearings, denoted in boxed text.

1.2. Applicant to provide an update on the current position, details of the discussion/ consultation held with bodies and summary of feedback provided, current scope of the assessment and timescales for submission.

The CCB submitted our detailed comments on the Chilterns AONB Special Qualities 1st draft (to Arup) by email on 27th Oct 2023 and then attended a virtual roundtable meeting, hosted by Arup/Aecom, on Monday 30th Oct 2023.

Natural England expressed support for the stance taken by the CCB on the draft Special Qualities study (REP 5-080).

The CCB is grateful for this engagement and will respond to the final version, as soon as practicable after its submission at Deadline 6 on 8th December 2023.

1.3. Proposed Extension to the AONB, the suitability of the Sensitivity Test [APP-107] and weight to be given to the proposed extension in the assessment of the Proposed Development.

The CCB's proposes to comment on the **weight to be given to be given to the AONB** extension in our response to the ExA's action points, located in our section 2.

Suitability of the Sensitivity Test [APP-107]. This has been dealt with in several papers. At Deadline 3 the CCB put in various points/queries (REP-3-143) and the applicant's responded to this (REP 4 – 101). In their response, (REP4-101, Appx F), they relied on previous points (their REP 1-027), their Relevant Response 1079 as well as the updated ES Ch 14 (AS-079). The CCB generally supports the Chilterns AONB Sensitivity Test (APP-107).

CCB made the principal point that the Sensitivity Test [APP-107] accepts that the **value** of some landscape receptors would increase, in the event of a national landscape (AONB) extension being implemented. Relevant factors, as identified in APP-107, included the landform, narrow winding lanes, isolated / scattered farmsteads, various PROW to the east of the airport (para 2.2.3). It is material, in our view, that the CCB's 2013 report on a boundary extension promoted the land to the east of the AONB. This document was accepted as a scoping document by the Planning Inspectorate, prior to the examination.

At **ISH 8** there was a discussion of the '*susceptibility of visual receptors*' and the '*value of views*' in any sensitivity test. We accept that visual susceptibility is different to landscape susceptibility. Following the GLVIA methodology, the assessment of visual effect will require an assessment of the sensitivity of a visual receptor, which is a combination of the value of a view and the susceptibility to change. An overflying aircraft within the AONB/National landscape will impact on tranquillity and will affect views of the landscape panorama. The GLVIA 3rd edition acknowledges that, '*people who are engaged in outdoor recreation including public rights of way and whose attention is likely to be focused on the landscape and on particular views*' will exhibit a high level of susceptibility (paragraph 6.33, page 113 of the GLVIA 3rd edition).

CCB Conclusion on the Sensitivity Test. In a scenario where the AONB is extended to the east of the airport and overflying volumes are proposed as in figures 14.4 to 14.17 of AS-102, then people walking the landscape who view this level of aircraft movement will experience a diminution of their visual enjoyment. Tranquillity is a separate matter and the subject of a separate methodology, to be proposed by the applicant. Nevertheless, broadly the same conclusion would be reached, in our view.

APP-107 in dealing with the sensitivity test acknowledged that, if the boundary is extended to the east, it impacts upon several Landscape Character Areas (LCAs). Further, it accepts that a recalibration of aesthetic and perceptual characteristics will be required. For the Examining Authority the best / most accessible data on increased flying are figures 14.4 to 14.17 in the ES APP-152, superseded by AS-102. This data helpfully displays the baseline and projected overflying to the east (candidate AONB, we submit) as well as over Ashridge (AONB, SAC) near Tring and Warden and Galley Hills (including SSSI), some 5km to the northwest of the airport. This document was refereed to, during both the ISP 6 and ISP 8 sessions. CCB considers this a useful document and helpfully and clearly encapsulates the volumes and geographical areas overflows (at less than 7,000 ft, a threshold agreed in Dept of Transport guidance).

CCB Conclusion on APP107 and the Sensitivity Test. If we adopt a **Rochdale Envelope** approach (i.e., taking the ‘worst case scenario’ and a measure of reasonable flexibility in the final design delivery), then it follows that the proposed future operation and mitigation is the subject of some detailed scrutiny at this stage. In any event, it’s difficult to envisage how overflying aircraft can be mitigated. **Action point 26 following ISH 6** sought confirmation as to how achievable it is for the proposed increase in flights to avoid the AONB. We are unsure if this issue has been addressed by the applicant. We assume the answer is ‘no’ because such matters are for the Civil Aviation Authority (CAA) and not the applicant.

1.4. Implications of Section 245 of the Levelling-up and Regeneration Act 2023, which will amend Section 85 of the Countryside and Rights of Way Act 2000. Visual effects and approach to mitigation:

The CCB’s proposes to comment on the implications of Section 245 of the LURA Act 2023 in our response to the ExA’s action points, located in our section 2.

1.5. Visual effects from buildings and structures on the eastern edge of the development, the fire training ground (Work No. 2d) and the appropriateness of new planting at mitigating effects including in winter; and Lighting Assessment:

CCB would not propose to comment on this agenda item.

1.6. Whether the Lighting Obtrusion Assessment [APP-052] and [APP-053] adequately identifies likely significant effects and the need or otherwise for a night-time Landscape and Visual Impact Assessment.

APP – 052 (part A) and **APP – 053** (part B) deal with the Lighting Obtrusion Assessment.

These documents deal with lighting within the airport’s curtilage and not the lighting and tranquillity implications of overflying. Those, we anticipate, will be covered by the special qualities / tranquillity study. APP-053 (Part B) when dealing with the masterplan on **landscape and heritage** states that, ‘*The existing airport is a visually prominent feature within views from the surrounding areas including Chiltern Way and Chiltern Way cycle route and in distant views from the Chilterns AONB near Warden.*’

Expansion of the apron stands to the east would impact upon the night skies of the land to the immediate east of the airport. Each aircraft stand has an illuminated 25 m high floodlight column. Following the debate at ISP 8, the CCB is not pushing for a full nighttime LVIA. However, some overlay information to the lighting masterplan will assist the ExA. This should denote the existing and proposed envelope of lighting, comprising before and after ‘footprint’ drawing showing the lighting of runway and aprons as a baseline and for subsequent phases. A drawing denoting the aircraft stands, and their 25 m high floodlit columns would be beneficial, in our judgment.

CCB Conclusions on lighting obstruction assessment. A Light Obtrusion Assessment has been completed by the applicant. It is included in the ES appendix 5.2 (**AS-052**), noting that it does not expressly assess impacts to the Chilterns AONB but that the

proposed development is within acceptable limits within the Institute of Lighting Professionals (ILP) guidance. The ES in chapter 14, page 12 [ADD AS REF], states, ‘*It can therefore be demonstrated that the visible effects of obtrusive light within the AONB would not be noticeable*’. To some extent, this is at variance with the finding in APP-053 (Part B), as dealt with above.

Nevertheless, the CCB recommends that runway, apron and wider security and other curtilage lighting beyond the terminal buildings are the subject of further detail.

2.0. Section 2.0 Action Points arising from the Issue Specific Hearing on biodiversity, water, land-use, landscape and visual, design and heritage and any other matters (ISH6) held on Wednesday 29th November 2023.

2.1. Action point 44 Submit the latest version of Frequently Asked Questions for the possible extension of the National Landscape, including the updated timeframes. Chilterns Conservation Board by D6

Attached to this submission are the latest versions of Natural England’s Frequently Asked Questions and Project Programme for the Chilterns AONB Boundary Review, circulated to the CCB by Natural England on 7th December 2023. Both papers are ‘living documents’ subject to occasional reviews and updates. CCB and/or Natural England will endeavour to provide the Examination with any future updates.

See:

- **LUTON DCO DEADLINE 6 Chilterns AONB BR timeline overview. December 2023.pdf**
- **LUTON DCO DEADLINE 6 Chilterns AONB FAQs - December 2023.docx**

2.2. Action point 45 Refer in post-hearing note to the new measures announced on 29 November including the potential search for a new National Park and any implications for the Application. Chilterns Conservation Board by D6

Since making the announcement, Defra and Natural England have clarified that Government has no preconception of the nature or location of a new National Park, and other reports were media speculation. There will be a new search based on Natural England’s “All-England Assessment” project, and the recommendations of the Glover Landscapes Review are not material to that search. Natural England will announce the selected candidate area in the Summer 2024, after which there will be an extensive assessment of the suitability of that area for designation. It would therefore be reasonable to give the possibility of the Chilterns (or another area proximate to London Luton Airport) becoming a National Park very little weight in determining this DCO application.

However, CCB would maintain that the ‘Nature’s Moment’ announcement, which was made on the same day as the hearing – 29th November – is itself material to the decision. Alongside the clear strengthening of the s.85 CROW Act duty (see below), the announcement signals an affirmation of the Government’s commitment to the conservation and restoration of nature in general, and of protected landscapes in particular. That affirmation should, in the view of the CCB, have an impact on the relative weight to be applied to the conservation and enhancement of nature in general and the Chilterns AONB, and its setting, in particular,

against the need for the expansion of aviation in general, and of Luton Airport in particular, given its location and the availability of other opportunities for the expansion of aviation that will not have the same immediate impacts on the viability and integrity of existing and future protected areas.

2.3. Action point 46 Provide a written response regarding the application of paragraph 174(a) of the National Planning Policy Framework (NPPF) and whether the landscape that is within the proposed area of search of a possible extension to the Chilterns National Landscape should be considered a 'valued landscape'. Applicant, LBC, Joint Host Authorities and Central Bedfordshire Council by D6

Natural England offers a standard response to strategic scale planning matters in relation to the AONB Boundary Review, which states:

Although the assessment process does not confer any additional planning protection, paragraph 174 of the National Planning Policy Framework (NPPF) states that planning policies and decisions should protect and enhance valued landscapes and recognise the intrinsic character and beauty of the countryside. Natural England advises that this area should be considered as a valued landscape...

The weight to be attached to a valued landscape, according to paragraph 174 of the NPPF should be "commensurate with their statutory status or identified quality in the development plan". The matter of what constitutes a "valued landscape" has been debated frequently in the Courts, and Natural England's advice above is consistent with the findings of the CEG case (EWHC 1799 (Admin) (18 July 2018)) that a landscape does not need to be designated to be considered valued in terms of para 174, and it follows that the weight to be applied to a valued landscape that has no statutory status and is not identified in the development plan, while limited, is not zero.

As Natural England progresses through the Boundary Review process, additional weight can, and should, be attached to the valued landscape. Such weight will be afforded by a number of factors, including more careful definition of the area concerned, e.g.:

- moving from an 'area of search' – where we are now – to 'candidate areas' put forward for statutory and public consultation;
- adding to the public understanding of the identified special qualities of the landscape (which could be provided through existing landscape character studies, and would be greatly enhanced when the 'area assessments' in the Boundary Review process are published, especially as these include an assessment of the contribution each area makes to natural beauty);
- progressive stages of the designation process itself.

The weight to be attached to all of this is, of course, a matter for the decision-maker at each stage of the decision-making process.

2.4. Action point 47 Provide a response to Natural England request [REP4-198] to re-evaluate judgements around the 'susceptibility of visual receptors' and the 'value of views' for visual receptors in the Chilterns AONB Sensitivity Test [APP-107]. Confirm whether the existing judgement is to be reconsidered and, if not, explain why. Applicant by D6.

No CCB response required on this action point.

2.5. Action point 48 Submission of written response on the implications of Section 245(6) of The Levelling-up and Regeneration Act 2023, which would amend Section 85 of the Countryside and Rights of Way Act 2000 Chilterns Conservation Board, Joint Host Authorities and Central Bedfordshire Council by D6

The amendment that led to Section 245 of the LUR Act as a whole was justified to the House of Lords by its proposer the Baroness Scott of Bybrook in these terms “The clause strengthens the duty on certain public authorities when carrying out functions in relation to these landscapes to seek to further the statutory purposes.” The intention was clearly to lead to a step-change in the level of attention that public bodies should pay to the purposes of designation of protected landscapes, in this case Areas of Outstanding Natural Beauty. Parliament is rightly not renowned for devoting time to making complicated changes to legislation that are not expected to yield tangible results.

The clear intention of the change is to move away from a situation which merely calls for passive regard to be had to the designation when weighing up the matters affecting a decision to pursue a particular activity, in favour of a positive and proactive assessment of how that activity will be able to “further” the purposes of designation, i.e. the conservation and enhancement of the natural beauty of the area. If the purposes (conserve and enhance) cannot be so furthered by the proposal, or the promoter is unwilling to further them, then the question needs to be whether the objectives of the proposal – in terms of meeting future aviation needs – might be met in a way that can, for example by providing increased airport capacity in location that will have lower, or zero, impacts on a nationally protected landscape with all the environmental, social and economic benefits it provides.

Other parts of s.245 empower the Secretary of State to issue regulations setting out how the relevant public bodies should comply with the duty, and, separately, how the same set of public bodies should contribute to the preparation, implementation and review of protected landscape Management Plans. However, this is a discretionary power, and compliance with the duty as set out in s.85 of the CROW Act as amended (from Boxing Day 2023 onwards) is not dependent on those regulations being published. It is CCB’s understanding that Defra will be moving towards issuing interim guidance on the interpretation of the duty.

As for the existing duty, the revised duty applies, individually, to the owners of London Luton Airport, the Examining Authority, and the Secretary of State for Transport.

It is, in CCB’s view, natural that the DCO application as submitted could not have pre-empted the application of the revised duty to “seek to further” the purposes of the AONB. We also recognise that aspects of the DCO application and the engagement processes that led to its submission demonstrate that the promoter has had some “regard” to those purposes, and the steps being taken to explore impacts on special qualities etc. through the examination contribute to and extend the nature and effectiveness of that regard.

However, in order for the DCO to be granted, we would submit that the promoter now needs to demonstrate to the Examining Authority how they have sought to further the purposes of conserving and enhancing the natural beauty of the AONB. This will be necessary in order to support both the Examining Authority and the Secretary of State in their ability to meet the duty. In CCB’s view, both decision-makers will also need to demonstrate that in coming to their recommendation or decision, they have also sought to further those same purposes, in each case having reference to any guidance or regulations on the interpretation of the duty that might be published in the meantime.

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8th December 2023

2 file attachments as:

- LUTON DCO DEADLINE 6 Chilterns AONB BR timeline overview. December 2023.pdf
- LUTON DCO DEADLINE 6 Chilterns AONB FAQs - December 2023.docx