Responses to ExA Written Questions ExQ2 (PD-015)

Application by Luton Rising to extend London Luton Airport

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SoS Ref: TR020001

HA Ref: 20040643

Date: 9 January 2024

Luton

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1 Introduction

1.1.1 This report provides the response of Luton Borough Council (LBC) as local planning authority (LPA) to the written questions (ExQ2 [PD-015]) of the Examining Authority (dated 15 December 2023).

1.1.2 The responses are provided in tabular form, with only the questions that were addressed to either Luton Borough Council or the joint Host Authorities being responded to in this document.

1.1.3 There have been inputs from the consultants jointly commissioned by the Host Authorities, namely: CASCL (forecasting and need); Pinsent Masons (dDCO); and Suono (noise).

ExQ2	Question to:	Question	LBC Response
2 Broad, general and cross-topic questions			
BCG.2.1	All interested parties	**Written questions following Hearings** At the Hearings [EV13-006], [EV14-008], [EV15-013] and [EV16-009] a number of questions were converted to written questions to be answered at deadline (D7). Please provide responses to these questions alongside those requested under further written questions (ExQ2). If you are providing your responses to ExQ2 in a table, the Examining Authority (ExA) is happy for you to include the responses to the hearing questions at the end of the relevant section. For example, questions from EV-014 could be included at the end of the responses to the traffic and transport questions from ExQ2.	Where pertinent to LBC, and not previously addressed at Deadline 6, a response to these written questions is provided at the end of the appropriate section of this table.
BCG.2.3	All interested parties	**Central Government policy and guidance** Are you aware of any updates or changes to Government policy or guidance, including emerging policies, such as the National	The ExA is already aware of the Levelling Up and Regeneration Act, which became law on 26 October 2023. On 19th December 2023, substantive changes were made to the National Planning Policy Framework (with a further minor amendment to paragraph 14b on 20 December 2023). The

		Planning Policy Framework (NPPF), that may come into force before the end of the reporting period that could be relevant to the determination of this application? If yes, what are the likely implications for the application?	majority of the changes occur in Section 5: Delivering a sufficient supply of housing, though there is also a greater emphasis on 'beauty' and design (see for instance paragraphs 20, 88, 96, 128 and the insertion of 'beautiful' into the heading of Section 12). The revisions to the NPPF also makes reference to the use of local design codes and the National Model Design Code (paragraph 138) as amongst a range of tools (including design advice and design review) for assessing proposals.
BCG.2.4	All local authorities	**Updates on development** Provide an update on any applications for planning permission or prior approval that have been submitted/ determined since the ExA's first written questions (ExQ1) [PD-010] that could either affect the Proposed Development or be affected by the Proposed Development and confirm whether these could change the conclusions reached in the Environmental Statement (ES). Could you also provide an update on the following applications: 1. Wandon End Solar Farm; and 2. Bloor Homes application.	There have been no planning applications submitted that would affect the Proposed Development or be affected by the DCO since the first set of written questions. A consultation under Schedule 2, Part 8, Class F of the Town and Country Planning (General Permitted Development) Order 2015 was submitted by the airport operator to LBC to determine whether the creation of a solar farm to the south of the runway was permitted development. LBC confirmed that the proposal constituted permitted development on 13 December (ref: 23/01314/GPDOPD). The solar farm will generate up to 10 Megawatts of electricity for use on the airport and will increase the renewable energy generated on site to at least 25% of the airport's direct energy needs. With regard to the cross boundary application for the 1.46km of underground cables (under Eaton Green Road) to connect to the proposed 106 hectare solar farm in North Hertfordshire (ref: 22/01657/FUL), that application is yet to be determined, though it is likely that it will be reported to LBC's Development Management Committee on 20 March 2023.

BCG.2.6	Applicant, LBC and the Joint Host Authorities	**Section (s)106 – Heads of Terms (HoT)** At D6 the Applicant provided a summary of the s106 HoT [REP6-072]. These differ from those included in the Planning Statement [REP5-016, section 5.8] in that they no longer include a provision for highways works or the reprovision of Prospect Day Nursery. Explain why these are no longer included or if they are still required, where/ how they should be secured.	LBC along with the other Host Authorities is engaging with the Applicant on the proposed s106 agreement with a meeting scheduled for the week commencing 15 January. With regard to the Prospect House Day Nursery, it is understood that the Applicant has provided the leasee with a 'letter of intent' to relocate the nursery should they still be in occupation. However, LBC understands that the lease for the nursery is up to 2028 and that the site is not required by the Applicant until 2032 (in order to enable to construction of the airport access road). LBC will discuss this matter further with the Applicant as the s106 is progressed. The provision for highway works that was originally proposed to be included within the s106 agreement related to the five junctions for which contributions were secured through the legal agreement associated with the GHP planning permission (ref: 17/02300/EIA). However, none of those junctions were identified in the transport assessment associated with the DCO, and therefore the inclusion of the contribution was not considered appropriate.
BCG.2.7	Applicant and LBC	**s106 – Green Horizon Park (GHP)** commitments The HoT provided at D6 [REP6-072] includes the GHP sports pitch and changing room reprovision contribution to provide a facility at either Stopsley/ Lothair recreation ground or Ely Way/ Lewsey Park recreation ground, with replacement/ improvements to	As noted in the response to BCG.2.6 above, LBC is due to meet with the Applicant in the week commencing 15 January to discuss the s106. Article 45 of the draft DCO records that the GHP planning permission (and associated s106) will remain in place and consequently the financial contributions and other commitments that are secured through the s106 agreement will also remain. The s106 includes a number of schedules, which include the triggers in relation to securing these contributions and commitments.

		adult changing facilities at the same place. However, the GHP s106 [REP1-008] also includes the following financial contributions: • £250,000 public art contribution; • £250,000 county wildlife contribution; • £30,000 biodiversity contribution; • £35,000 replacement tree contribution; • £3.45 million roads and highways improvement contribution; • £35,000 Raynham Way Neighbourhood Park Play contribution; and • £6,000 towards monitoring. In addition, it requires the provision and layout of Wigmore Valley Park replacement land and includes an employment, skills, procurement and training strategy (Schedule 3 of the s106). Can you explain how/ where these contributions/ commitments would be secured and, if they are not being secured, why they would no	Schedule 1 of the GHP s106 requires the financial contributions to be paid prior to the commencement of the GHP development. Schedule 2 requires the Wigmore Valley Park replacement additional land to be provided and laid out before any part of the GHP development at the existing Wigmore Valley Park is carried out. The replacement land to be secured by the GHP planning permission would ensure that the area of Wigmore Valley Park that is lost through the GHP development would be replaced by the new parkland that is to be created. The DCO will secure an area of new parkland that is of greater size than the replacement parkland that would be provided through the GHP planning permission (and s106 agreement). The DCO recognises that not all of the GHP development will be able to be built out should the SoS grant consent, consequently the DCO s106 makes provision for the full sports and leisure contribution (minus any amount that may have been paid to LBC if phases of the GHP permission have been implemented). Schedule 3 of the GHP s106 obliges the owner not to commence the development until the Employment, Skills, Procurement and Training Strategy has been submitted to and approved by LBC.

		longer be required? You may wish to combine the response with the answers to questions BCG.2.8, 2.9 and 2.10	
BCG.2.8	Applicant and LBC	**s106 – GHP highways works** The s106 for GHP would deliver £3.45 million contribution towards road and highways improvements in the vicinity of the development including: • Castle Street Roundabout; • Junction of Castle Street/ Hibbert Street/ Windsor Street; • Junction of New Bedford Road/ Cromwell Road; • Junction of Windmill Road/ Osborne Road; and • Junction of Old Bedford Road/ Stockingstone Road/ Hitchin Road. None of these works are included in the current application. Can you explain how these works would now be secured or, if they are no longer secured, why they would no longer be required? You may wish to combine the response with the answers to questions BCG.2.7, 2.9 and 2.10.	As noted in response to BCG.2.7 above, the GHP planning permission (and associated s106) will remain in place (article 45 of the draft DCO) with the requirement in Schedule 1 for the financial contribution towards the highways improvements to the five junctions to be made prior to the GHP development commencing.

BCG.2.9	Applicant and LBC	**GHP s106 – Eaton Green Link Road** Under the current s106 for GHP the Eaton Green Link Road can only open once the New Century Park (now GHP) access road is built as a fully functioning dual carriageway along its whole length. Would such a restriction still be required in relation to the Airport Access Road? If not, why not, and if it is signpost where/ how this would be secured. You may wish to combine the response with the answers to questions 2.7, 2.8 and 2.10.	LBC is of the view that a similar control would be required in relation to the DCO, restricting the opening of the Eaton Green Link Road for use by the public until the completion of the Airport Access Road. In the Committee Report relating to the GHG development, it was recorded that, *"The Highways Engineer comments that if the proposed link to Eaton Green Road is provided in advance of the New Century Park access road being completed then there would be disbenefits for the adjoining highway network and residential areas."* It is considered that similar disbenefits would arise if the link road were open to public traffic ahead of the Airport Access Road being completed.
BCG.2.10	Applicant and LBC	**GHP s106 – Replacement land** The GHP proposal would result in the loss of parts of Wigmore Valley Park. As a result, the GHP s106 includes a requirement that replacement land as shown on plan LLADCO-3B-CAP-LS-00-DR-LD-0021 rev P01.1 [REP4-073] is provided and laid out. Article 45 of the draft Development Consent Order (DCO) [REP5-003] would enable the implementation of both the GHP consent and the Proposed Development.	With regard to the first question, the DCO would result in the loss of more of Wigmore Valley Park than was the case with the GHP planning permission, however, the DCO will provide a greater area of replacement parkland than is secured by the GHP permission – consequently there is not a need to deliver additional replacement land to that being proposed through the DCO. In response to the second question, it is not envisaged that the hybrid industrial quarter will be built on the area of Wigmore Valley Park that will be secured through the DCO. It is anticipated that the Applicant will clarify this in their Deadline 7 submissions, since the Applicant indicated in paragraph 5.2.9 of its post hearing note to ISH10 [REP6-068] that it would review article 45 as part of its updated draft DCO at Deadline 7.

		1. The GHP replacement land is now included in the replacement land for the Proposed Development. Given this, confirm whether the implementation of both the GHP consent and the Proposed Development would result in the loss of additional parts of Wigmore Valley Park. If yes, would this result in a need to deliver additional replacement land and, if so, outline how much would be required and how it would be delivered/ secured. 2. Plan LLADCO-3C-ACM-WHS-GEN-DR-CE-0001 rev P01 [REP4-073] shows a hybrid industrial quarter on part of Wigmore Valley Park. The plan includes the annotation 'will not be implemented under either the DCO or the GHP permission'. However, looking at the plans submitted it would appear to be possible to partially, if not wholly, implement this element alongside the Proposed Development. This could result in the further loss of open space from Wigmore Valley Park and create a need for additional	LBC looks forward to the Applicant's response at Deadline 7 and will discuss this further with the Applicant as the s106 is finalised.

		replacement land. Explain how the ExA can be confident that this element of the GHP permission would not be implemented and where this is secured. Alternatively, set out where/ how the additional replacement land needed to mitigate this loss would be delivered. You may wish to combine the response with the answers to questions 2.7, 2.8 and 2.9.	
BCG.2.11	Applicant and all interested parties	**s106 – HoT** Throughout the Examination the Applicant and various Interested Parties (IPs) have advised that certain mitigation measures would be needed and could be secured through the s106. These include, but are not limited to: • request by Historic England [REP1-070] and [REP4-173]; • request by Bedfordshire Fire and Rescue Service [RR-0142]; • request by East of England Ambulance Service NHS Trust [RR-0401]; and • various requests from the Joint Host Authorities.	As set out in responses above, LBC, together with the other Host Authorities, is engaged in on-going discussions with the Applicant on the proposed s106 agreement, as well as other issues, with a view to agreement being reached prior to the end of the Examination, including on the items to be included in the s106. LBC and the other Host Authorities are now broadly content with the scope of the heads of terms (subject to the response above), as discussions progress and conclude on other matters (e.g., GCG), it may be that further items need to be secured through the s106 agreement or variations made to those items currently secured. LBC will update the ExA on these as they arise.

		1. Applicant: Explain why these are not included in the current HoT and, if they are required, signpost where/ how these are being secured. 2. Interested Parties: List any further mitigation measures that should be included in the HoT with an explanation as to why.	
BCG.2.12	Applicant and all interested parties	**s106 – Alternatives** The Applicant intends to submit a completed s106 agreement at D9 (30 January 2024) [REP6-072]. However, should the s106 not be completed could any of the matters that would have been secured by the agreement be secured through other means e.g. a requirement? If so, provide details of which elements, how they could be secured and an appropriate form of drafting.	LBC and the other Host Authorities will work continue to seek to work with the Applicant with a view to reaching agreement on the s106 agreement in good time during the Examination. However, the Host Authorities are conscious that the end of the Examination is fast approaching, so it would be prudent to consider a 'backstop' solution in a scenario where the s.106 agreement is not agreed prior to the end of the Examination. Notwithstanding the points made in the ExA's Rule 17 request dated 3 January 2024, the Host Authorities' view at this stage is that the nature of the detailed provisions that would be contained in a completed s106 agreement would not in themselves be appropriate for inclusion as a DCO requirement (or requirements). Instead, the Host Authorities consider that the most robust approach would be for a new DCO requirement to be included that requires a s106 agreement to be entered into prior to the authorised development commencing (or certain DCO powers being exercised). There is general precedent for this approach in other made DCOs (such as in the Thames Water Utilities

			Limited (Thames Tideway Tunnel) Order 2014 (as amended)). The Host Authorities will discuss this approach with the Applicant as part of the on-going engagement on the s.106 agreement and will seek to present an update on this position to the ExA as soon at Deadline 8.
BCG.2.13	Applicant and all relevant Highway Authorities	**Traffic modelling – implications for air quality, health, and noise and vibration assessments** 1. Relevant Highway Authorities: Review the final report summarising the outcome of the accounting for Covid-19 in transport modelling that should be submitted by the Applicant on 15th December 2023 [AS-159]. Provide a summary of any outstanding concerns and what needs to be amended/included in order to satisfactory address the concern(s) by D7. 2. Applicant: If there are outstanding concerns please review and provide details of how they will be resolved during the Examination by D8. You may wish to link the answer to this question with your response to question TT.2.1.	LBC has reviewed the Applicant's final report Accounting for Covid-19 in Transport Modelling [AS-159] and has engaged with the Applicant, consultants and other highway authorities as the Applicant has developed the updated model runs and discussed the emerging findings. The Applicant has set up a further meeting with the highway authorities on 11 January to discuss the final report. LBC has no outstanding concerns with regard to the modelling which broadly shows that the strategic road network has largely recovered, with the slight exception of A1081 between J10 and J10A, providing a good comparison with the 2023 modelled flows. With regard to traffic volumes on the local road network, this has not returned to previous levels, meaning that the model has produced higher flows than is the case post Covid-19. As such, it is considered that the Applicant's model is robust and the mitigation proposed in association with the development remains appropriate. Since the Applicant has effectively taken the worst-case scenario in their modelling, LBC has no comment in relation noise or air quality implications either.
BCG.2.16	Applicant and LBC	**Implementation of 19mppa consent**	Pre-application discussions are on-going with the airport operator in relation to the submission of information pursuant

		At the November Hearings it was indicated that the Airport was in pre-application discussions regarding the submission of the information needed to discharge the conditions to enable the passenger cap to be raised to 19mppa. Can you provide an update/ timetable for the submission of the applications to discharge these conditions?	to conditions 9 (noise reduction strategy), 18 (updated travel plan incorporating the car parking management plan) and 19 (carbon reduction strategy) of the P19 planning permission. It is still anticipated that the airport operator will submit the applications before the end of January and LBC will provide the ExA with updates as appropriate at subsequent deadlines.
3 Air Quality and odour			
AQ.2.3	Applicant and LBC	**Technical note for landfill gas monitoring** A technical note for landfill gas monitoring is referred to in the SoCG between the parties [REP6-027]. 1. Applicant: Provide a copy of this technical note. If this is not available by the next deadline, indicate the anticipated timescale for delivery. 2. LBC: If the note has been received, provide an update on your review of this document and confirm whether the questions in the SoCG [REP6-027] in relation to landfill gas and monitoring are now satisfied. If not, please explain why and	The Applicant issued a draft technical note on gas mitigation measures to LBC on 21 December 2023. The Council has reviewed this document and met with the Applicant on 9 January 2024 in order to be able to close off the outstanding issues within the SoCG relating to remediation (LBC118), watching brief (LBC119) and gas mitigation (LBC120). It is understood that the document will be submitted to the ExA for Deadline 7. LBC indicated that a supplement to the document should be provided, detailing other gas mitigation measures (or in combination measures with the proposed 'virtual curtain') if the magnitude of migrating gas exceeds the capacity of the virtual gas curtain. The intent of this supplement is to provide clear direction to the designer/engineer responsible. Having met with the Applicant, LBC will be able to agree the outstanding issues listed above.

		what would need to be done to address your concerns.	
AP25 from ISH8 [EV15-013]	Applicant /IPs	Update regarding how potential complaints in relation to odour could be made and managed, and how this would be secured. Interested Parties (IPs) to comment on subsequent deadline.	An initial response was provided at Deadline 6 in LBC's post hearing submission for ISH8 [REP6-106] together with related comments on AP22 (the Applicant's Fuel Odour Control Procedure) and AP24 (the potential issue of odour and flies) [REP6-107]. LBC awaits to see how the comments in relation to reporting structures have been taken on board by the Applicant.
AP26 from ISH9 [EV16-019]	Applicant/ Joint Host Authorities	Continue to work with the relevant local authorities to develop a robust QA/ QC monitoring process	LBC is still discussing with the Applicant a QA/QC procedure and/or providing a reference-equivalent instrument for PM monitoring co-location.
AP26 from ISH9 [EV16-019]	Applicant/ Local Authorities/ National Highways	Submit document displayed during hearing showing relationship between transport documents and GCG Framework, including the amendment to show where the Framework Travel Plan would link to GCG. Local Authorities/National Highways to review the document and respond at D7.	LBC provided a response to this at Deadline 6 [REP6-094].
4 Compulsory Acquisition and Temporary Possession of land and rights			
CA.2.1	Applicant and LBC	**Quality of replacement open space at the point it becomes accessible to the public** The ExA note the response provided at D6 [REP6-064,	LBC recognises that it will take a considerable period for the newly created parkland and habitats to become established and that the Proposed Development, being phased, will see construction taking place over many years. However, the Proposed Development does not result in the loss of all of

		paragraph 4.4.5]. Whilst the ExA recognise that this position is not unique to this application, in this case it would take a significant length of time for the replacement land to be of a similar quality to the current Wigmore Valley Park. In addition, the land adjacent to the new park would be subject to construction works for a considerable length of time. In order to encourage the use of the replacement open space and to maximise the visitor experience during this time what additional measures could be undertaken (e.g. use of mature replacement planting, enhanced facilities, screening etc.) and how/ where could these be secured?	Wigmore Valley Park, rather the parkland nearest to Eaton Green Road and the residential area of Wigmore would be retained and would link in to the replacement open space to the east. The Strategic Landscape Masterplan [APP-172] shows this area being enhanced as part of Works No. 5(b(01), with improvements including additional surfaced pathways, proposed woodland planting and the creation of new scrubland habitats. Additionally, the Applicant proposes to provide the new children's play area and skate park – secured through the GHP planning permission (ref: 17/02300/EIA) – and is currently discussing with the LPA how these might be delivered early by making minor amendments to the GHP planning permission (utilising s96A of the Town and Country Planning Act 1990). The replacement open space would also be provided as part of Works No.5(b)(02), creating newly accessible areas for the public, with improved connectivity through new surfaced paths and upgraded public rights of way, together with additional woodland planting, hedgerow restoration and meadow grassland
CA.2.2	Applicant and LBC	**Need for land - alternative locations for car parking to Wigmore Valley Park** The Friends of Wigmore Valley Park identify land to the north of Percival Way as 'ideal' for a multi-storey car park [REP6-127]. This land is within the Order Limits. They suggest that	With regard to the part 1 of this question, addressed to the Applicant, LBC will provide commentary on the Applicant's response for Deadline 8 should it prove necessary. However, the Council would point out that the position is not as simple as that indicated by Friends of Wigmore Valley Park (FoWP) in their REP6-127, since whilst some of the land is within the Order Limits it is not all within the ownership of the Applicant, so the statement in FoWP's

		this would mean Wigmore Valley Park would not need to be removed from public use until Phase 2. 1. Applicant: Provide details of all the locations/ alternatives considered for the provision of parking as an alternative to the use of Wigmore Valley Park, including that identified by the Friends of Wigmore Park and confirm that this search is up to date. 2. LBC: Provide an assessment of whether there are suitable plots of land for car parking use locally that could reasonably be used as an alternative to Wigmore Valley Park.	representation is not correct that this will entail "no purchase requirements." Further, land between Prince Way, President Way and Eaton Green Road (on the eastern side of Frank Lester Way up to the car hire surface car parks), is designated Category A Employment Land, as is land between Percival Way and Eaton Green Road (on the western side of Frank Lester Way). Policy LLP14 of the Luton Local Plan states that in relation to Category A Employment Land, *"changes of use or redevelopment within the employment areas and sites which would result in a loss of floorspace for economic development uses will be resisted."* The loss of employment land for a multi storey car park would therefore be resisted. In relation to the second part of the question, as to whether there are suitable plots of land for car parking, this was obviously something that was considered during the determination of the GHP planning application (ref: 17/02300/EIA). A car parking strategy was submitted with that application, which had to consider the relocation of car parking spaces on a temporary basis during the construction of the access road, so as not to adversely impact upon the operation of the businesses at the airport, as well as providing permanent long term provision, but multi storey parking on the employment land between the access road and the residential properties in Eaton Green Road was not considered appropriate. The issue of alternative parking provision was also considered during the construction of the DART, since that development resulted in a significant loss of parking spaces

			as the route went through the mid-stay car park. One solution considered was the creation of a decked car park on the mid-stay car park, providing 1,040 spaces A second option considered, and taken forward, was the multi-storey car park referred to as Terminal Car Park 2 (TCP2). This car park provided space for the temporary drop off zone at ground floor level, and 1,975 spaces in five floors above. Clearly, with the fire that took place at TCP2 in October 2023 and the loss of that parking, finding additional parking provision is a priority for the airport. Informal approaches for additional parking have related to sites not within the airport strategic allocation, which would be contrary to Policy LLP6C, which states that, *"proposals for airport related car parking should be located within the Airport Strategic Allocation"* (subject to certain caveats). The policy goes on to address airport related parking outside the strategic allocation, one key criteria being that it has to be demonstrated that "there is a long-term car parking need that cannot be met on the airport." The need associated with the loss of TCP2 is not a long-term need, and the same would be the case for the DCO in terms of temporary solutions for car parking between Phase 1 and 2a.
CA.2.3	LBC	**Application of Local Plan Policy LLP6E** Your response to the application of Policy LLP6E [REP6-104] is noted. However, the question related to the precise wording of Part E of the policy, which states that 'in delivering development and access under clause D (i.e. Century Park) above…'. If the	LLP6E does not directly apply to the Proposed Development, since the wording of Policy LLP6E is specific to the proposed development of Century Park through the use of the abbreviation 'i.e.' within the policy (the Latin '*id est*' translating to '*that is*').

		current proposal progresses, Century Park as envisaged in clause D would not be delivered. Given this context, confirm if Part E of Policy LLP6E would still apply to the current proposal and if so, explain why.	
CA.2.4	Applicant, LBC, all relevant Local Authorities and Friends of Wigmore Valley Park	**Previous informal use of the proposed replacement open space** The recent removal of any permissive informal use of the proposed replacement open space through clear signage is noted [REP6-064]. Please confirm whether, in your opinion, this action operates retrospectively so as to 'erase' any rights that may have arisen before erection of signage. The Friends of Wigmore Park are collating evidence of long-term informal use of the land. If it is demonstrated that the land, or paths across the land, have been used informally by the public over the required period: 1. Provide an assessment of how, in your opinion, s31 of the Highways Act 1980 applies to this land and any implications of	The contention by Friends of Wigmore Valley Park that the land to the east of Wigmore Valley Park has been used for informal recreation for a long period is not accepted by LBC and is not supported by the evidence in relation to the planning application submitted for the GHP development (ref: 17/02300/EIA). The GHP application was submitted on 15 December 2017 and was accompanied by an Environmental Statement (ES), with one section of the ES addressing 'Agricultural and Soils'. The ES records that the site *included "approximately 23.1 ha of land currently in agricultural production in the east"* (paragraph 7.11.20) noting further that, *"the agricultural land within the eastern part of the Site is currently farmed as part of a large (approximately 1,418 ha) agricultural holding, involved with producing mixed combinable arable crops and livestock (cattle and sheep)"* (paragraph 7.11.31). The application was reported to the Council's planning committee in March 2019, again with reference to the agricultural use, the loss of which was one of the planning considerations that had to be taken into account when determining the application. LBC will comment further, if necessary, when Friends of Wigmore Valley Park, submit their response at Deadline 7.

		this for its use as replacement open space. 2. Provide an assessment of how, in your opinion, the Commons Registration Act 1965 and the Commons Act 2006 apply to this land and any implications of this for its proposed use as replacement open space.	LBC will await the Applicant's response to the ExA's question with regard to the legal aspects in relation to s31 of the Highways Act 1980 or the Commons Registration Act 1965 and the Commons Act 2006.
CA.2.5	Applicant, LBC and Friends of Wigmore Valley Park	**Wigmore Valley Park Asset of Community Value (ACV) and Compulsory Acquisition** The ExA understands that Wigmore Valley Park is an ACV. 1. Does this have any bearing on the proposed compulsory acquisition of the land? 2. If it is a registered ACV does this have any implications for the Book of Reference i.e. could there be a Category 2 interest?	S122 of the Planning Act 2008 sets out the purposes for which compulsory acquisition may be authorised, namely: *(1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met.* *(2) The condition is that the land—* *(a) is required for the development to which the development consent relates,* *(b) is required to facilitate or is incidental to that development, or* *(c) is replacement land which is to be given in exchange for the order land under section 131 or 132.* *(3) The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily.* The fact that Wigmore Valley Park (WVP) is an ACV makes no difference to whether the land can be compulsorily acquired; it is for the SoS to be satisfied that the appropriate conditions are met.

			In relation to the second question, a Category 2 interest covers *"a person that is interested in the land or has power to sell and convey the land or to release it."* Whilst the two parish councils, the nominating community groups, may wish to express an interest in WVP if the Council were to indicate that it was going to sell the land, they would need to express an interest within 6 weeks of the notice to dispose, and in that event they would still need to prepare a bid for the ACV within six months of the notice, though there is no obligation on the owner to sell to the nominating community groups. However, the powers that the Applicant is seeking are those of compulsory acquisition and as noted in response to the first question, these powers are given by the Secretary of State where the land is required, or where replacement land is given – which would be the case in this instance.
AP4 from CAH2 [EV13-006]	Applicant and LBC	Provide an update on the progress of discussions about establishing a Community Trust for the future management of Wigmore Valley Park (indication that this would be secured by means of Section 106)	An initial response was provided at Deadline 6 and the Applicant is submitting a draft s106 agreement for Deadline 7, in response to the ExA's Rule 17 letter of 03.01.2024. Discussions in relation to establishing the Community Trust are on-going, with a further meeting to discuss the S106 set for the week commencing 15 January.
AP9 from CAH2 [EV13-006]	Applicant and LBC	The reprovision of Prospect Day Nursery appears to be based on an assessment of need at time of relocation. Given the loss of the facility is highlighted as a major significant effect in the	In part, this has been addressed in the response to BCG.2.6. However, in addition it should be recognised that the Prospect House Day Nursery is a commercial business, responding to market demands, which may change in the years ahead, whilst also noting that the lease on the premises expires in 2028 and the business may not be

		Environmental Statement and would be affecting persons with protected characteristics, why is its reprovision subject to this proviso? Is it acceptable?	present at the time when the Applicant requires the land. Consequently, it is considered that the proviso to reassess the need at the time of relocation is appropriate – though LBC will discuss this further with the Applicant when meeting in the week commencing 15 January.
5 Draft Development Consent Order			
Articles			
DCO.2.2	Applicant and LBC	**Article 45 (2)** As currently drafted this paragraph would prevent LBC taking enforcement action against noncompliance with the conditions of the GHP or LLAOL permission for any breaches that would occur after a notice was served under paragraph 1. 1. Applicant: Can you confirm if such a provision is permissible as it would effectively prevent the Council from undertaking one of its statutory functions. 2. LBC: As drafted you would be unable to take enforcement against any breaches of the GHP or LLAOL planning permissions. Is this appropriate and what measures would be available to the Council to remedy any breaches if such a function was removed?	Whilst part 1 of this question is posed to the Applicant, Pinsent Masons acting on behalf of LBC as one of the Joint Host Authorities consider it appropriate to respond to it. Article 45(2) to 45(4) – meaning of “inconsistent” The Host Authorities understand from the Applicant’s Explanatory Memorandum and from the discussion on this topic at ISH 10 that the Applicant’s intentions underlying the drafting of article 45(2) and (3) is to safeguard the existing planning permissions (the LLOAL planning permission as defined in article 2(1) and the Green Horizons Park planning permission as defined in article 45(5) and referred to in this response as the “Existing Panning Permissions”), any future planning permissions and the development consent that would be granted by this development consent order, from being prejudiced by the *Hillside* decision in relation to any inconsistency arising between the development consent and those permissions (and vice versa). In principle, a development consent order can contain a provision that achieves that outcome. It would be within the scope of section 120(3) of the Planning Act 2008, being a

			"matter ancillary to, the development for which consent is granted." Additionally, section 120(5) is clear that a DCO may modify existing statutory provisions and may include *"any provision that appears to the Secretary of State to be necessary or expedient for giving full effect to any other provisions of the order."* While not commonplace, there are sufficient examples of development consent orders interacting with planning permissions and other development consent orders that would support DCOs including deliberate measures to manage those interactions proactively rather than leaving them to be subsequently interpreted by the courts. However, while such a provision may be within the scope of the powers afforded to the Secretary of State under the Planning Act 2008, whether or not such a provision is appropriate for inclusion in this development consent order is a matter for the judgement of the Secretary of State. In that regard, the potential consequences of the provision need to be carefully scrutinised. It clearly would not be appropriate for a DCO to interfere unduly and disproportionately with a local planning authority's functions so as to prevent enforcement action being taken under either the 1990 Act or the 2008 Act. With some variations, article 45(2) to (4) uses *"inconsistent with any power or right exercised under this Order or the authorised development"* as its yardstick for identifying an inconsistency between a planning permission and the development consent order. There are two issues with this formulation (and indeed the other similar formulations used in paragraphs (2) to (4) of article 45).

			First, while it appears the Applicant intends “inconsistent” to convey the technical meaning in which it is used in the *Hillside* judgment, clearly the term “inconsistent” in its ordinary and natural meaning invites a broader interpretation, which is the manner in which a court is required to construe it absent any other assistance from the legislation. For example, it would not strain the meaning of the term “inconsistent” to say that the conditions of the Existing Planning Permissions are inconsistent with the provisions of the Order. This is evidently the case; they are different consents covering different developments, but such differences would not automatically be “inconsistent” in a *Hillside* sense. Therefore, to avoid the provisions of article 45 being misconstrued in the future it should be made clear on the face of article 45 that the inconsistencies it is concerned with are those in the *Hillside* sense and not the wider ordinary and natural meaning of “inconsistent”. Secondly, the yardstick against which such inconsistencies are to be measured are similarly drawn widely, relating to *“any power or right exercised under this Order or the authorised development.”* This would include (i) the exercise of the “front end” provisions, such as the “streets” provisions in Part 3 and the “supplemental powers” in Part 4 of the draft DCO, (ii) the compulsory acquisition of “rights” and land under Part 5 of the DCO, as well as (iii) the “authorised development” as given effect by Part 2, “principal powers”. The decision in *Hillside* was concerned only with the interaction of overlapping planning permissions and if the Applicant seeks to safeguard against the effect of that decision, it ought to be constrained to the Planning Act 2008

			equivalent, being the development consent granted for the "authorised development" and not the subsequent exercise of other "powers" or "rights" which, unless otherwise caught by the definition of "authorised development", would not require planning permission. Article 45(2) Paragraph (2) is drafted so as to apply *"To the extent that the LLOAL planning permission or the Green Horizons Park permission or compliance with any conditions or* [sic – it is assumed this should be read as an "of"] *either of those permissions is inconsistent with any power or right exercised under this Order or the authorised development".* This is said by the Applicant in its Explanatory Memorandum to be intended to capture the situation where the Existing Planning Permissions, or their conditions, are inconsistent with the authorised development or any function that may be exercised under the Order. The key point being it is the "inconsistency", however it so arises, that is caught by this paragraph. This distinction is understood by the Host Authorities and it means that it is not the case that the Existing Planning Permissions are rendered wholly unenforceable; only unenforceable in relation to an "inconsistency" with the Order. If "inconsistency" is construed in its narrow *Hillside* sense this may be acceptable. If "inconsistency" is construed in a wider sense more in keeping with its ordinary and natural meaning, then it clearly significantly limits the relevant planning authorities' enforcement powers. Paragraph (2) then goes on to say that:

			"The inconsistency is to be disregarded for the purposes of establishing whether any development which is the subject matter of that planning permission is capable of physical implementation." This appears to be targeted at the Hillside scenario and it tells us to ignore the Hillside rule when determining whether the remainder of any of the Existing Planning Permissions is physically capable of implementation, after development has been carried out; *"no enforcement action under the 1990 Act may be taken against such development carried out in accordance with that planning permission by reason of such inconsistency, whether inside or outside the Order limits; and", which appears to be targeted at avoiding otherwise compliant development carried out under the one of the Existing Planning Permissions being enforced where the breach in question relates to an 'inconsistency' between the planning permission and the Order; and* *"any conditions on that planning permission that are inconsistent with this Order or the authorised development cease to have effect from the date the authorised development is begun".* This renders the conditions of the Existing Planning Permissions, where inconsistent with the DCO, unenforceable from the date that the authorised development is "begun". As was discussed at ISH10 and recorded in the Host Authorities' post hearing submission (including written summary of oral submissions) [REP6-095], because the term "begun" is not defined in the DCO then the

			definition contained in section 155 of the Planning Act 2008 would prevail. Section 155 of the Planning Act 2008 confirms that development is taken to "begin" on the earliest date on which any "material operation" is carried out. A *"material operation"* is defined as *"any operation"* (the prescribed exceptions referred to in that provision relate to regulation 7 of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015, which exclude from that definition the marking out of a road). Consequently, very trivial "operations" can be taken to have "begun" development. It should also be noted that "begun" is not tied to the concept of "commence" and so those trivial operations required for the authorised development to have "begun" may not be caught by the pre-commencement requirements. As can be seen, where the "inconsistency" is constrained to its narrow *Hillside* meaning the provisions are potentially acceptable, assuming the other issues are remedied. But when given their wider meaning, where they would bite on any difference, it would have the clearly inappropriate effect of curtailing the relevant planning authorities' enforcement functions. In relation to article 45(2)(c), given that trivial operations are capable of "beginning" the authorised development without the need for discharge of pre-commencement requirements, the enforcing authorities may be wholly unaware that the authorised development has "begun" for the purposes of these provisions. The second issue is that, given the nature of this DCO and the way in which it is structured, it will in practice be very difficult to understand in any meaningful

			way whether any inconsistency has arisen. Indeed, it may not be possible to do so at the point that the authorised development is “begun” and the inconsistency may only crystallise at a later stage. This is because many of the requirements (both operational and pre-commencement) require an outline certified document to be developed into a detailed document and submitted for approval. It is only once these outline documents have been approved does the duty on the undertaker crystallise and so the “inconsistency” becomes manifest, yet the inconsistent planning condition to an Existing Planning Permission is deemed to be ineffective, so far as the planning permission is concerned, since the authorised development “begun”. This is most evidently a significant risk in the construction phase prior to the service of the article 44(1) notice where the airport will continue operating under the LLOAL permission but the development will be being built under the provisions of the DCO, and all the while the Green Horizons Park planning permission will subsist in the background. Further, many of the powers included in the Order are of a general or unspecified nature. For example, the power in article 15 (access to works) authorises the Applicant to form and layout means of access, or improve existing means of access *“at such locations within the Order limits as the undertaker requires for the purposes of the authorised development”*. It is important to note this power is not tied to the ”construction” of the authorised development but to the far wider *“for the purposes of the authorised development”* and so could be used during operation. The power is

			exercisable with the consent of the street authority, who may very well not be the relevant planning authority (as most street authorities will be the highway authority, i.e. the upper tier county council). Whether or not the exercise of such a power is inconsistent with any of the Existing Planning Permissions is fundamentally a matter in the hands of the Applicant when considering how to exercise those powers. Such an inconsistency may only arise long after the authorised development has “begun”. It is evident in that scenario that there is a considerable risk of such inconsistencies arising. It is therefore incumbent upon the Applicant, the person with the benefit of the Existing Planning Permissions and the provisions of the DCO, if granted, to be clear in relation to such development, which permission or consent it is relying upon. Consequently, at ISH10 the Host Authorities recommended the Applicant give consideration to the inclusion within article 45 of procedural provisions that would require the Applicant in such circumstances to give notice to the relevant planning authority, to identify the nature of the inconsistency and to confirm that it is relying upon the provisions of the Order to carry out such development, and to confirm whether such development is being carried out pursuant to the Order or to the relevant Existing Planning Permission, so there can be clarity as to which provisions regulate such development. The Applicant may well say in reply to this concern that the relevant planning authority will have the role of approving submissions under the requirements and so it will be apparent to it whether or not such inconsistency will arise, and it has the option of refusing to approve such a

			submission. The Host Authorities' answer to that would be to say that, given the deemed consent provisions coupled with the very short time frames for determination, such an approach places too high a burden on the authorities also to vet for consistency with the Existing Planning Permissions. This is not a burden they would ordinarily bear under the 1990 Act; in such circumstances the *Hillside* rule would ultimately provide clarity. As it is the Applicant's desire to disapply the rule in *Hillside* the drafting in article 45 ought to ensure that the burden falls on the Applicant to specify, in relation to any inconsistency that has arisen, whether it is relying on either the Existing Planning Permission or the development consent order and that the specified consent may continue to be enforced against in relation to matters other than the mere existence of an inconsistency. The Host Authorities note that the Applicant intends to submit an updated DCO at Deadline 7 addressing the matters discussed at ISH10 and so the Host Authorities will look forward to considering those updates in due course. However, having reflected on the discussion at ISH 10, the Host Authorities consider that any updated drafting of article 45 ought to include, at a minimum: • A clear definition for "inconsistent" in a *Hillside* sense and one which: - uses as its yardstick the "authorised development" only, and not the wider "exercise of any power or right"; and

			- in relation to timing, runs only from the point in time when an inconsistency arises. • In relation to the Existing Planning Permissions and paragraph (2), procedural provisions requiring the Applicant, where it becomes aware of an inconsistency, to serve notice on the relevant planning authority confirming which of the Existing Planning Permissions, or the development consent order, that it is relying upon. • In relation to article 45 (3) and (4) where the undertaker is also the person with the benefit of the new or other planning permissions, to comply with the procedural provisions referred to in the bullet point immediately above. • Confirmation in relation to paragraphs (2) to (4) that the relevant consent (be it an Existing Planning Permission, another planning permission, or the development consent order) relied upon remains enforceable in relation to all other aspects beyond the *Hillside* inconsistency. With regard to the second question addressed to LBC, as noted in the response above, the Host Authorities consider that with the amendments and clarifications suggested above, article 45(2) to (4) is capable of being drafted in a form that would not give rise to the risk identified by the ExA in its question.

			However, if this is not achieved the Host Authorities would contend that it would not be appropriate for the Order to put development beyond enforcement under both regimes. If the Applicant's definition of "inconsistent" were to remain as it currently stands then there is a risk that LBC (and indeed, the other Host Authorities that are also relevant planning authorities) may find themselves in a situation where there is inappropriate development against which enforcement action cannot be taken. This risk is most acute in relation to article 45(3) if "inconsistent" is given its ordinary and natural meaning where no enforcement action could be taken under either the Town and Country Planning Act 1990 or the Planning Act 2008 *"by reason of such inconsistency."* In such circumstances the relevant planning authority would have very limited options and would have to consider its broader suite of local authority powers with a view to identifying an appropriate 'tool' to fit the circumstances of the mischief arising. For example, if the inappropriate development were to give rise to a statutory nuisance it could look to its powers under the Environmental Protection Act 1990, although it must be noted that in relation to the authorised development those powers are curtailed by the Planning Act 2008 and by the provisions of the draft DCO.
6 Green Controlled Growth (GCG)			
GCG.2.2	All Local Authorities	**Increase of thresholds, limits and contours** Confirm whether any additional wording is required in the GCG framework [REP5-022] to limit	LBC does not consider that any additional wording is required.

		the circumstances in which an increase in the thresholds, limits or contours could be allowed, for example in paragraph 2.3.4 of the framework.	
GCG.2.10	All Local Authorities	**Automatic Number Plate Recognition (ANPR) data** Do you consider that a specific mechanism is required in the draft DCO to agree the location and approach to monitoring traffic using ANPR, or similar, to inform air quality impacts in Appendix D of the GCG framework [REP5-030] If not, why not?	Due to the ES air quality assessment concluding that the operational phase impacts would not have a significantly detrimental effect, the installation of a wider permanent network of ANPR cameras was not something that LBC required. However, LBC recognise that ANPR-derived data can be very useful. It would assist LBC if the applicant could provide additional clarification on how, when and where they would propose to use ANPR data to look at air quality impacts, as does not appear to have been covered elsewhere in their submission. Paragraph D2.3.19 of Appendix D [REP5-030] appears to describe tools and data sources that might be used to investigate exceedances of the GCG Limit or Level 2 Threshold, though it is unclear whether the suggested use of ANPR refers to the installation of permanent cameras or the initialisation of a temporary survey triggered by a potential breach. The airport already has ANPR located at the traffic lights on the Airport Approach Road that provide access to the mid-stay car park, thereby identifying all vehicles from that point onwards in to the airport. It could be expected that further ANPR would be at the Eaton Green Link Road. The on-site ANPR would need to be augmented with offsite monitoring to assess the local impact of airport-related traffic.

			If temporary surveys are to be used, clarification on how/when they will be triggered would be welcomed. Additionally, LBC would expect to be consulted on and agree the specifics of any offsite ANPR surveys undertaken within its administrative area for air quality purposes (especially in terms of locations and timings).
AP4 from ISH9 [EV16-009]	Applicant/LBC and Joint Host Authorities	Continue to discuss as part of Statement of Common Ground process the concerns regarding the ESG chairperson having the final say as to whether an ESG member is suitably qualified.	Discussions on the SoCG are on-going with a meeting scheduled for 10 January between the Joint Host Authorities and the Applicant. It is anticipated that this issue will be resolved.
AP11 from ISH9 [EV16-009]	Joint Host Authorities	To include in post hearing submission any remaining concerns regarding the timescales for approvals/ activities set out in the GCG Framework and any proposed alternative timescales.	LBC has no remaining concerns regarding the timescales for approvals and activities set out in the GCG Framework, and accepts the amendment made by the Applicant from 21 to 28 days for the ESG to approve plans.
AP14 from ISH9 [EV16-009]	Joint Host Authorities	At present the GCG Framework provides no mechanism to sanction the airport operator for an ongoing breach of limits, or failure to resolve a breach. Provide detail/ drafting as to how such a mechanism might work.	As noted at ISH9, LBC and the other Host Authorities remain concerned that there are no effective sanctions for continued breaches of Limits under the proposed GCG Framework. As currently drafted, where a Limit is breached the Applicant would be required to implement a Mitigation Plan, but there is no consideration of what might happen should that Mitigation Plan not reduce impacts below those which were assessed as part of EIA, beyond implementation of a further Mitigation Plan. As such, simply by breaching a Limit, a breach of the DCO does not occur, provided efforts are made to mitigate that breach. This means the enforcement regime under the Planning Act 2008 would not apply.

			Absent an ability to 'reverse' growth in the event of continued breaches of Limits, the Host Authorities consider that a proportionate, but suitably robust, financial sanctions regime should be put in place, culminating in payments to a community fund (which the Authorities propose is the existing Community Fund proposed to be kept in place under the s106 agreement, which already envisages 'penalty' payments for different breaches (by airlines) being paid into it). There has been discussion during the Examination as to the need for the benefits of growth to be equitably shared between the Applicant and local communities. The same principle applies in the event of continuing breaches, which give rise to on-going adverse effects on communities – those communities should be appropriately compensated. This approach is supported in various aviation industry guidance, such as in the Civil Aviation Authority CAP 1129: Noise Envelopes available at: https://publicapps.caa.co.uk/docs/33/CAP%201129%20Noise%20Envelopes.pdf This states on page 51 that financial compensation to a community fund is one form of appropriate action in the event planning controls are breached. The Host Authorities are not advocating for such a sanctions regime to be triggered in the event a Limit is breached initially. Instead, it is proposed to apply only where a Mitigation Plan has not been effective in removing that breach within 12 months of its implementation (or within the relevant timetable contained within that Plan). The financial sanctions could be payable periodically where a Limit is shown to remain breached (e.g. every 3 months) or annually on a pro rata basis – it would depend on the nature of the breach and the monitoring in place. This would clearly need

			to operate alongside the required revised Mitigation Plan – if that was able to correct the Limit breach within a reasonable timescale, the financial sanctions would clearly be reduced. The quantum of financial penalty needs to be of sufficient level to act as a real incentive to operate the Airport in a way so as to encourage a precautionary approach to growth. In this context, the Host Authorities note that the Applicant will have benefited from increasing its capacity whilst not meeting the Limits in the GCG Framework. In terms of how such financial penalties should be calculated, it is helpful to consider, by way of analogy, penalties payable under other regulatory regimes. For example, the environmental sentencing guidelines link the level of fines with turnover, resulting in significant fines (running into the millions) for breaches of environmental legislation. Another example is that under the street works regime – in the event that such works overrun, a set amount is payable per day for the duration of that overrun. However, the Host Authorities also acknowledge the need for a proportionate, reasonable approach. For that reason, the Hertfordshire Host Authorities are willing to discuss the level of financial penalty with the Applicant. The Host Authorities are aware of the Applicant's position that such a sanctions regime is not required due to the robustness of the GCG Framework. In response to that, the Host Authorities would submit that if that is correct, the risk of a financial sanctions regime being triggered would be minimal, so putting one in place would be of low risk to the Applicant. In any event, an approach similar to the GCG

			Framework is unprecedented, so it is reasonable there is some residual doubt as to its effectiveness.
7 Need			
NE.2.2	Applicant and all Local Authorities	**Forecasting with Gatwick** The forecasting parameters in the Need Case [AS-125] limits growth at Gatwick Airport to 50 million passengers per annum (mppa), although the response to ExQ1 N.E.1.4 [REP4-059] states this could rise to 53.5mppa on a single runway by 2050 (51mppa at 2030 and 52mppa). The post hearing submission response for ISH2 from the Joint Host Authorities [REP3-093] comments that Gatwick Airport has estimated that the airport could accommodate a passenger throughput of 67mppa in a base case without a northern runway (i.e. do-nothing scenario). Applicant: 1. Explain why there is a difference between your assumptions and that by	London Gatwick Airport's assessment of its own capacity with just its existing single runway is higher than that used as an illustration by CSACL in its September report to the Host Authorities [REP2-057].[1] Therefore this capacity assessment made by Gatwick's management/advisors gives further weight to the position of CSACL that the Applicant has under-estimated the capacity available at Gatwick, and in turn this would delay achievement of a 32 mppa throughput at Luton. CSACL also contended that passenger handling capacity at Heathrow would increase for similar reasons as at Gatwick (viz. continued growth in average passengers per movement) in contrast to the Applicant's assumed 90 mppa limit at Heathrow. Further growth in Heathrow's capacity would also make its own contribution to delaying achievement of 32 mppa throughput at Luton.

[1] Sources from documents submitted for the Gatwick Airport North Runway Project DCO on the PINS website, for instance Planning Statement, paragraphs 3.4.3 and 3.4.5 on page 37 and Table 3.4 on page 41 [PINS ref: APP-245 - 7.1 Planning Statement], or the Need Case, paragraph 1.1.8 on page 1-2, paragraph 5.2.26 on page 5-34, and paragraphs 6.3.2 and 6.3.5 on page 6-48/51 [PINS ref: APP-250 - 7.2 Needs Case]

		Gatwick Airport as quoted by the Joint Host Authorities. 2. Explain whether a difference of 14mppa between the figures can be considered 'marginally greater' (using the terminology in your response to ExQ1 NE.1.4 in [REP4- 059]) and the implications a difference in increase of 14mppa would have on your forecasting figures. Local Authorities: 3. Provide any comments on this question.	
8 Noise			
NO.2.1	All Local Authorities	**2019 actuals/ consented baseline** The called-in decision for application ref: 21/00031/VARCON creates a potential 19 mppa fallback position. On the basis that this fall-back position now exists, can the local authorities provide detailed reasons if, and if so why, they consider it necessary to use a baseline position other than the 2019 actuals that is set out in the ES? If an argument remained to use the 2019 consented baseline as the core	The P19 decision only increases the noise contour limit for future years and does not amend limits for years past. For 2019, any baseline can therefore only be directly compared against the previous P18 decision. No summer periods since 2019 have given rise to noise contours greater than those that would have been limits for the P18 decision, and therefore use of any of these other years as a baseline would also be compliant and acceptable to the five Host Authorities. The Applicant is requested to propose future summer period noise limits in both the day and the night that fall below the historic baseline, showing noise reduction over time. These noise limits can be greater than the future baseline years (the do-minimum), as this increase in total adverse effects is

		case, what specific additional assessment do the Local Authorities consider would need to be submitted (including any health-related assessment) and why?	permitted by UK aviation policy, so long as a trend of noise reduction continues. The Applicant's newly proposed summer period noise limits should also demonstrate a fairer balance of benefit sharing with the local community than currently proposed. It is noteworthy that acceptance of a non-compliant baseline could set a precedent whereby regularising a breach only results in positive outcomes for an airport. In such a case, it becomes easier to demonstrate noise reduction associated with any new application (even then, the Airport only manages this in the daytime).
NO.2.3	All Local Authorities	**Disregarded movements** The Air Noise Management Plan [REP6-051, paragraph 2.6.1] includes a list of movements to be disregarded. Confirm whether the grounds for dispensation are acceptable, given that certain matters identified may be within the control or influence of the airport. Confirm whether the Applicant should reference any particular guidelines on dispensation.	Paragraph 2.6.1 of the referenced document refers to Sections 2.1.6 to 2.5 within it. It is assumed that this should properly read 2.2 to 2.5 and would request the Applicant double-check these references. The grounds for dispensation listed in bullets a - g (forming the total list) are acceptable, on the basis that accepted definitions are used for bullets a and b. The Applicant should either fully define these two terms or make reference to Annex F: Guidelines on Dispensations of Department for Transport's Night Flight Restrictions, March 2023 to ensure these grounds are correctly applied and for the avoidance of doubt. The two terms are: *'serious congestion'* (bullet a), and *'widespread and prolonged disruption of air traffic'* (bullet b). The remaining bullets are sufficiently clear to not need further definition.

NO.2.4	Applicant and all Local Authorities	**Noise violation limits** The Air Noise Management Plan [REP6-051] includes a proposed reduction in the noise violation limits from 2028, consistent with the current permission. Given the long-term nature of the Proposed Development, should the plan seek to include additional reductions in those limits in subsequent phases?	The NVLs in place at London Luton Airport have contributed to ensuring aircraft fly in the correct manner, but have not clearly led to incentivisation for quieter aircraft, which has been achieved through other means. NVLs should be proposed to reduce over time, in line with the introduction of quieter aircraft. If these are not entering service, then reducing NVLs could lead to fines for the majority of aircraft, which potentially disincentives flying quieter aircraft. The Air Noise Management Plan therefore needs to include scope to reduce NVLs, where appropriate, and for this approach to be suitably secured. Such an approach could include reviewing NVLs as part of the Airport's Noise Action Plan. While this is within the control of London Luton Airport, should they choose not to tighten NVLs over time, a situation could arise whereby aircraft fly in a less-regulated manner. This in turn impacts the summer noise contours, which are enforceable. NVLs are therefore a useful tool for the Airport to maintain for their own benefit. These comments should be read in conjunction with the Response to Suono's Note on Noise Controls **[REP6-052]** in the Host Authorities' Comments on Any Further Information / Submissions received by Deadline 6.
NO.2.5	Applicant and all Local Authorities	**ATM cap** Noting the Applicant's comments about the crudeness of simple movement caps [REP1-003],	The total ATM cap should be no greater than what has been assumed within the various assessments undertaken for the DCO application. This will ensure that the provided secondary metric information, such as overflights and

		can the Applicant and Local Authorities confirm what the numeric value of a total ATM cap should be if one were to be applied to the airport. Should the cap vary over time?	Number Above contours remains accurate. The Need Case **[AS-125]** identifies this figure as 209,410 aircraft movements. A phasing or varying of this cap over time is not expected to offer material benefits beyond what is being proposed by the 5-yearly forecasting period within the Green Controlled Growth framework. Variation of the ATM cap is not sought. These comments should be read in conjunction with the Response to Suono's Note on Noise Controls **[REP6-052]** in the Host Authorities' Comments on Any Further Information / Submissions received by Deadline 6.
NO.2.6	Applicant and all Local Authorities	**Shoulder period noise controls** If additional ATMs were consented during the night shoulder periods, as proposed by the Applicant, can you suggest what would be suitable shoulder period quota count point limits and/ or ATM limits?	As with the response to NO.2.5 ATM cap, the limits, and associated QC values, should be set based on aircraft movements and mix assumed within the DCO application. This would ensure that movements do not drift out of the core night period into the shoulder periods, where there is higher potential for sleep disturbance. It is not clear from the Applicant's documentation what the actual limit would be, but we expect the future possible QC budget figures will be provided by the Applicant at Deadline 7. Once this is provided, LBC will be able to consider further.
NO.2.8	LBC, Central Bedfordshire Council and North Herts Council	**Monitoring for ground noise impacts** Do you consider that any additional noise monitoring should be undertaken in proximity to the airport in respect of ground noise impacts? If so, where should this be?	There is no control against which to monitor ground noise, which would make monitoring an additional exercise for the Host Authorities to maintain with little benefit. The controls in place limit the number of aircraft movements that can occur to a suitable extent such that ground noise is inherently controlled. This works alongside the Outline Ground Noise Management Plan **[REP4-049]**.

NO.2.9	Applicant and all Local Authorities	**Cargo, business and private ATM movements** The impact of night flights has been raised as a significant concern by residents, in particular late night/ early morning cargo flights. 1. Applicant: explain what specific restrictions apply to cargo, business and private flights during the night-time period if different from commercial flights. 2. Local authorities: Given the proposed increase in commercial flights during the night period, should additional constraints now be placed on any cargo, business and private flights? If not, why not, and if yes what should they be?	As set out within the response to NO.2.6, a shoulder period limit would prevent drifting of movements from the core night to the shoulder periods. Cargo flights are likely to cause the most concern of the three listed in the question, as these flights typically consist of heavier, larger aircraft which create higher noise levels than commercial aircraft. These comments should be read in conjunction with the Response to Suono's Note on Noise Controls **[REP6-052]** in the Host Authorities' Comments on Any Further Information / Submissions received by Deadline 6.

9 Physical effects of development and operation

Design			
PED.2.4	Applicant and the Local Authorities	**Design principles – highway works** Applicant: Design Principle HW.01 [REP5-034] refers to the detailed design being in accordance with the DMRB and Local Authority Highway Design	LBC does not have a specific highway design guide, developers working in the town are routinely referred to the Manual for Streets and the DMRB. Luton being almost completely urbanised means that the Manual for Streets is considered the more relevant design document. In Luton the DMRB would generally only prevail where the speed limit is

		Requirements. Has any consideration been given to design being in accordance with the DfT guidance Manual for Streets, particularly in areas where public realm functions are proposed? If not, why not? Local Authorities: Are there any aspects of Manual for Streets where the design of highway works would be applicable or should be applied in your respective areas? If so, indicate where and if not, why not?	greater than 30 MPH. As such, the Manual for Streets is one of the local authority highway design requirements for Luton.
AP53 from ISH8 [EV15-013]	Applicant/LBC	Applicant and LBC to further discuss how design would be reviewed to ensure good design as required by paragraphs 4.29 to 4.35 of the Airport National Policy Statement and paragraph 126 of the NPPF, if it is not to be delivered through an independent design review panel.	LBC provided a response in the post hearing submission on ISH10 at Deadline 6 [REP6-095] with a meeting taking place on 12 December with the Applicant. LBC provided the Applicant with comments on the design review process associated with major developments in Luton and provided the Applicant with further comments to strengthen and give greater clarity to design in the Applicant's Design Principles [REP5-034]. LBC awaits the updated submission of the Design Principles, together with details of how the Applicant proposes to take forward Design Review workshops with the LPA.
Historical Environment			
PED.2.8	Applicant and ~~Central Bedfordshire~~	**Excavation of Roman settlement (HER 10808)**	With regard to the questions addressed to CBC, the area that of the Roman settlement is located within LBC and consequently the ExA's questions are responded to below.

	~~Council (CBC)~~ LBC	Originally the Applicant proposed that the Late Iron Age/ Early Roman and Roman occupation site (Historic Environment Record (HER) 10808) would be preserved in situ. However, following a request from the Archaeology Advisor for CBC, section 9.1 of the Cultural Heritage Management Plan [REP4-020] includes a methodology for archaeological excavation of the site. The Cultural Heritage Gazetteer (CHG) [REP4-017] considers there would be a minor adverse/ not significant residual effect in the ES and a less than substantial harm on this asset. Applicant: 1. Given the proposal would now result in the loss of this heritage asset, justify the assessments provided on page 75 of the CHG [REP4-017]. ~~CBC~~ LBC: 2. Are you in agreement with the assessments on this asset provided by the Applicant in the CHG? If not, why not?	2. Yes, the applicant's heritage consultants liaised with the Archaeological Advisor (AA) for LBC during the evaluation stages associated with the project and the field evaluation was monitored by the AA. As a consequence of the evaluation works, further information about this asset was acquired and this led to assessments prepared by the applicant in relation to its significance. The AA was kept aware of this as part of the pre-DCO submission process. 3. This asset is not demonstrably the equivalent of a scheduled monument. It does not meet the standards as set out in the scheduling selection criteria by Historic England (see Scheduling Selection Guides | Historic England). It is of local to regional significance and the latter level of significance is ascribed largely because, based on present data, it is unusual in Luton and Central Bedfordshire for structural remains of Early Roman buildings to survive. However, as demonstrated by the field evaluation, this site has suffered a relatively high degree of truncation in the past (probably due to agricultural activity). Therefore, what remains is only a small proportion of what was once on the site, which has an influence on how much of its original character remains legible and understandable today. The ability to characterise sites and their state of preservation influences their significance. The percentage of the site evaluated was sufficient for LBC to be satisfied with the level of significance assigned to this site. 4. Paragraph 211 of the NPPF (Dec 2023) is clear that when a development is permitted, developers should record and advance understanding of the significance of any heritage

		3. Noting the content of footnote 68 on page 57 of the NPPF, is this non-designated heritage asset of archaeological interest demonstrably of equivalent significance to scheduled monuments? If it is does would this change the conclusions of the assessment and if not, why not? Applicant and CBC: 4. Provide justification for the loss of this non-designated heritage asset against relevant policies in the NPPF, Airports National Policy Statement (ANPS) and development plan. 5. Given the proposed excavation of this heritage asset, in accordance with paragraph 205 of the NPPF, would there be an opportunity for the understanding of the asset and archaeology in this part of the Proposed Development to be advanced through measures incorporated into the Strategic Landscape Masterplan?	asset to be lost (wholly or in part) and to make this information publicly available. This must be proportionate to their importance and the impact of the proposals. These requirements are closely mirrored by section 5.210 of the ANPS. The importance of the site has been clearly set out in the assessment undertaken by the applicant and reiterated in the AA comments above and earlier in the examination process. Whilst Paragraph 211 of the NPPF and section 5.209 of the ANPS also state that the ability to record a site should not have an influence on whether its loss should be permitted, and Policy LLP30B of the Luton Local Plan indicates a presumption in favour of the retention of heritage assets, the Roman site (HER10808) has already suffered a high degree of truncation. The 2019 evaluation **[REP4-019]** demonstrated that the Roman building remains lie at a depth of approximately 0.22m (22cm) below the present ground surface. This means that they are exceedingly vulnerable and close to the surface. The applicant's initial proposals were to preserve these remains in situ within an area of open space. However, the field in question is currently under the plough and thus to create grassland will require a measure of arable reversion, probably including changes in the structure to the ploughsoil that overlies the archaeological remains. These changes are likely to require the use of heavy machinery. As the present soil coverage over the archaeological remains is shallow, the risk of active damage from machinery both used to improve the soil and compaction from the movement of heavy vehicles is great. Furthermore, the presence of the building remains at this location is now in the public domain and, if they were

			preserved in situ, within open space there would be a risk of unsolicited activity such as metal detecting. As a consequence, it is considered by the AA, that the most appropriate, reasonable, and proportionate action to take, is for this site to be fully excavated and the results made publicly available. This meets not only paragraph 211 of the NPPF but also sections 5.195 and 5.210 of the ANPS and LLP30E-F of the Local Plan. 5. If the applicant were to put forward options for interpretation of the archaeology at the site, the AA would support that.
PED.2.12	Applicant and all Local Authorities	**Assessment on harm** The CHG [REP4-017] identifies a number of heritage assets where 'less than substantial' harm would arise. What weight should be given to the cumulative impact of several cases of 'less than substantial' harm to heritage assets'?	The Applicant's EIA assess the impact of the Proposed Development upon the heritage assets within Luton as resulting in no harm or at worst having a minor adverse impact (which is not considered to be significant). Consequently, the assessment concludes that the Proposed Development would result in 'less than substantial harm' to the significance of the individual assets. The assessment does consider heritage assets such as the various conservation areas within Luton, with their associated listed buildings, and the effects of the Proposed Development are not considered to be significant. There is not considered to be a cumulative effect on heritage assets within Luton, and consequently no weight should be given to the cumulative impact of several cases of 'less than substantial harm' to heritage assets.

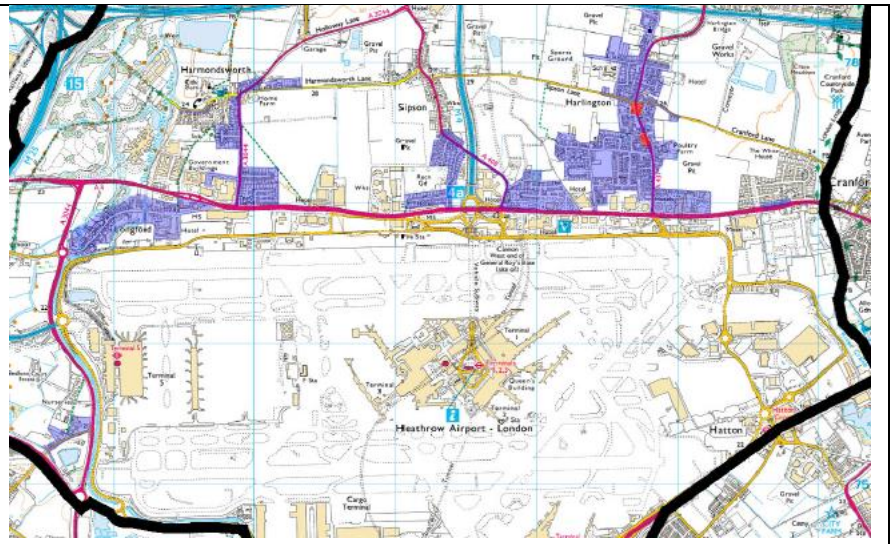
Landscape and Visual Impacts			
PED.2.18	Applicant and all Local Authorities	**Hedgerows** Work No. 5e proposes planting hedgerows alongside public footpaths across nearby fields as proposed 'additional mitigation' to screen the Proposed Development. However, it was noted during site inspections [EV1-021] that a number of these would be planted within open fields where views of the wider landscape, including towards the airport, could be considered to form part of the enjoyment and recreational value of these receptors. 1. Applicant: To what extent has this been considered in determining the suitability of planting hedgerows as a mitigation measure? 2. Local Authorities: Are there any areas of proposed hedgerow located within your areas that raise concern in this respect?	Off-site hedgerow restoration in Work No. 5e is not within Luton and therefore LBC has no comment to make in relation to the proposed hedgerow planting and enhancements.
PED.2.21	Applicant and all Local Authorities	**Ash dieback** Has the potential effect of ash dieback and the implications this could have on the proposed mitigation measures been	The Arboricultural Impact Assessment [AS-085] provides details of the number of trees and groups of trees on the site and the number of trees that are to be removed associated with the development. There are a significant number of ash

		considered in the Landscape and Visual Impact Assessment? If not, why not and should it be?	trees, and it would appear that approximately 30% are to be removed. The Outline Landscape and Biodiversity Masterplan [AS-029] describes the existing semi-natural broadleaved woodlands, which include ash, and details the species that would be included within any created woodland – ash is not included in the proposed planting mix (paragraph 5.13-5.14). The report does reference ash dieback in relation to conditions surveys to the woodlands that will be enhanced (paragraph 4.2.2[c]) and in relation to the protection and monitoring of trees to ensure health (paragraph 4.2.4). LBC's ecologist notes with regard to ash dieback that *"the Luton area in general does not seem to be as impacted by the disease as many other places, so although we are all aware of it and can see it in young self-sets in particular, we have lost few mature ash specimens so far."* He further comments that: *"Ash is not a dominant species in many parts of the Borough and is much more a component of woodlands in the flatter limey soils of the Lea valley & the steeper slopes of the surrounding downlands than it is of the peripheral clay lands of Stopsley, Farley & elsewhere higher on the plateau-like dip slope. This includes the area of the airport and its landscape mitigation hinterland. The native woods in these areas eg Winch Wood, are dominated by oak, birch, rowan and bramble unlike say Bramingham Wood, dominated by ash and field maple. As ash is not a prominent species (mainly seen as hedgerow*

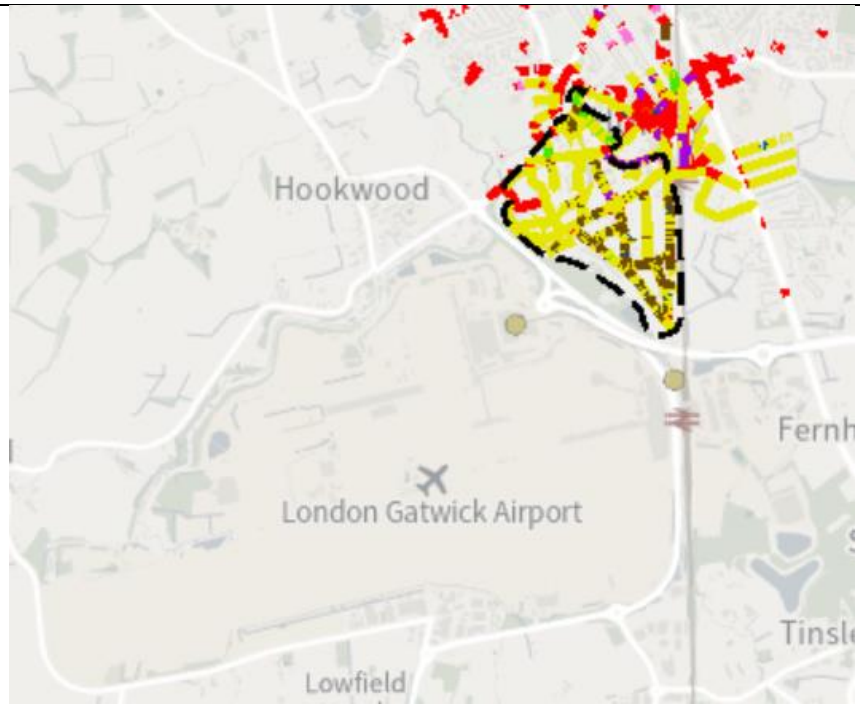
			standards) the impact of dieback is likely to be limited in the landscape context." It is considered that given the number of trees, the stewardship of the woodlands proposed and the mitigation measures with enhancement planting to woodlands not including the introduction of more ash, the impact of ash dieback in terms of visual impact should not be significant.
10 Traffic and transport			
TT.2.1	Applicant and all Relevant Highway Authorities	**Transport modelling** 1. Relevant Highway Authorities: Review the final report summarising the outcome of the accounting for Covid-19 in transport modelling that should be submitted by the Applicant on 15th December 2023 [AS-159]. Provide a summary of any outstanding concerns and what needs to be amended/included in order to satisfactorily address the concern(s) by D7. 2. Applicant: If there are outstanding concerns please review and provide details of how they will be resolved during the Examination by D8.	The following response has also been provided in relation to BCG.2.13 above. LBC has reviewed the Applicant's final report Accounting for Covid-19 in Transport Modelling [AS-159] and has engaged with the Applicant, consultants and other highway authorities as the Applicant has developed the updated model runs and discussed the emerging findings. The Applicant has set up a further meeting with the highway authorities on 11 January to discuss the final report. LBC has no outstanding concerns with regard to the modelling which broadly shows that the strategic road network has largely recovered, with the slight exception of A1081 between J10 and J10A, providing a good comparison with the 2023 modelled flows. With regard to traffic volumes on the local road network, this has not returned to previous levels, meaning that the model has produced higher flows than is the case post Covid-19. As such, it is considered that the Applicant's model is robust and the mitigation proposed in association with the development remains appropriate.

TT.2.16	LBC	**Eaton Green Link Road** Action Point 27 from ISH7 [EV14-008] asked 'Explain whether or not Local Plan Policy LLP6 applies to the current application and the reasons why.' The action specifically applied to the proposed Eaton Green Link Road; a previous planning application had included this link road even though the planning officer's committee report concluded that it was contrary to policy LLP6 because it provided access to Eaton Green Road. The specific policy was LLP6D(i) which states 'details of the proposed access, which shall be via the extension of New Airport Way (which connects the airport to M1 J10A) and shall link Percival Way through to Century Park (as shown by the arrow on the Policies Map), such access shall be designed so as to ensure that no use is made of Eaton Green Road to provide access to Century Park or the Airport, except for public transport, cyclists, pedestrians and in case of emergency.' Explain whether,	The following answer was provided in relation to CA.2.3 and is also applicable to this question. LLP6E does not directly apply to the Proposed Development, since the wording of Policy LLP6E is specific to the proposed development of Century Park through the use of the abbreviation 'i.e.' within the policy (the Latin '*id est*' translating to '*that is*').

		or not, Local Plan Policy LLP6D(i) applies to the current application and the reasons why.	
TT.2.18	LBC	**Parking** [REP6-105] stated that it is the Council's policy that parking permits are funded by the permit holder. The ExA are aware of several Councils where local businesses fund parking permit schemes so that the residents who would be inconvenienced by the parking associated with that business do not incur any cost. Consider if this could be implemented in Luton and, if not, explain why not.	While this could be considered, the Council's position is that the Highway is there for all to use. Waiting restrictions are introduced where there is a risk to highway safety or parking/waiting would prevent traffic using the highway to pass and repass. A resident's permit scheme restricts who can park and it is considered that those benefitting from such a scheme should cover the administration costs of providing the permits. Furthermore, it is not considered reasonable to have permits paid for by a third party in part of the town and charge residents in another part of the same town.
TT.2.19	Applicant and LBC	**Parking** Is the Applicant aware of how other airports such as Stansted, Gatwick or Heathrow manage onstreet airport related parking issues. Could any of the strategies used by these airports be used for Luton and if not, why not?	**Heathrow:** In the past the airport has assisted the London Borough of Hillingdon (the borough in which the airport is situated) with funding for enforcement officers to support the council in particular hot spots around the airport, where Parking Management Schemes (PMSs) exist or parking restrictions are in place. The map below details PMSs in Hillingdon in proximity to the airport (blue shading to the north of the airport).

			 The airport has established a 'parking special interest group' as a sub-meeting of the Heathrow Area Transport Forum, with members including local resident representatives, local authorities, Transport for London, Metropolitan Police, British Parking association, and the airport operator, to agree a joint action plan. A significant problem around the airport is associated with private hire vehicles (and anti-social behaviour), together with rogue 'meet and greet' operators, who park or leave passengers vehicles in local roads in the area. Heathrow has sought to address this through the provision of an Authorised Vehicle Area (AVA), which has facilities for drivers (catering, prayer room, toilet facilities and will have EV charging), and has been geofenced by Uber and Bolt, so that their drivers can only collect pick ups from Heathrow if they are located in this area.

			The airport has run awareness campaigns re the AVA, though it does have limitations as it is located on the Northern Perimeter Road, so not ideal for Terminal 4, and has a £1/hour charge (with some operators not willing to use it). Both Heathrow and Gatwick are working with the British Parking Association (BPA) on introducing an Airport Parking Code of Practice for meet and greet operators, as well as a national communication campaign to wan passengers about the risk of using rogue operators for airport parking. **Gatwick:** Fly parking is not a significant issue at Gatwick since there are very few residential streets within easy reach of the airport. The airport is situated within the borough of Crawley, with the nearest CPZs in that borough being in Crawley itself, circa 2.5km to the south. Horley village is situated to the north of the airport, in the borough of Reigate and Banstead, with a CPZ being in place covering the village, together with other parking restrictions such as single and double yellow lines (see map below).

			 A bigger issue at Gatwick is the illegal off airport car parking, with the airport assisting the local planning authority in their efforts to enforce against these, whilst the airport also conducts regular campaigns to advise about avoiding rogue off-airport parking. The airport operator indicates that a key strategy is to have plenty of choice for parking for passengers, with long stay parking being priced competitively so as to encourage its use.
Q17 from ISH7 [EC14-008]	LBC	Confirm when Travel Plan for the 19 MPPA Planning Consent is to be submitted to LBC and if it is	The Council indicated at Deadline 6 that it was anticipated that the Travel Plan for 2024-2028 was likely to be submitted

		submitted before the close of the Examination then submit a copy into the Examination.	pursuant to condition 18 in January 2024. If this is received before the close of the Examination it will be submitted.
Q18 from ISH7 [EC14-008]	LBC/Applicant	Detail potential options to mitigate the fly parking issue in the Luton area including exploration of whether a Controlled Parking Zone could be progressed/ would be viable including exploration of how these measures could be funded without any cost to residents.	The Council provided a response to this question at Deadline 6 [REP6-105].
11 Water environment			
WE.2.3	Applicant and LBC	Drainage in the period between Project Curium and Phase 2 of the proposed development The Project Curium permission included a number of conditions requiring that the surface water drainage system was updated to prevent pollution. These works remain outstanding and this was, at least in part, reflected in conditions 10, 11, 15 and 16 of the 19 mppa consent 'for the protection of groundwater'. For the benefit of Article 44 either of these planning permissions could constitute the LLAOL planning permission.	LBC has a meeting with the Applicant post Deadline 7 to discuss the outstanding issue in relation to the drainage improvements that were to be secured in association with Project Curium (18mppa) and also has a meeting with the Applicant in the same week to discuss the draft DCO (and the implications of Article 44 for this outstanding element of Project Curium). LBC is also in discussion with the airport operator and is aware that the airport operator has submitted a water discharge activity permit to the Environment Agency (EA) in August 2023, this has yet to be allocated to a permitting officer due to the complexity of the permit and a national level backlog of undetermined applications. The issue with a potential gap in the drainage improvements remains unresolved and it is LBC's view that historic drainage infrastructure issues should be remedied expediently by the DCO and not left until Phase 2 (should

		Serving of notice under Article 44 would mean that the LLAOL planning permission in place at the time that the notice was served and the conditions of that permission would cease to have effect and would not be enforceable except in respect of a breach that predated the serving of the notice. If the works required by Project Curium/ the 19mppa permission are not carried out before the DCO came into force, then drainage improvements may not be implemented until Phase 2. LBC has expressed concern that this could give rise to a potential gap in drainage improvements between Project Curium/ the 19 mppa consent and the Proposed Development [REP6-027]. Provide an update on discussions on this matter.	they not have already been undertaken by the airport operator when the notice is served).