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London Luton Airport Expansion

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8.151 Applicant's Response to Written Questions - Compulsory Acquisition and Temporary Possession of land and rights

Infrastructure Planning (Examination Procedure) Rules 2010

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The Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

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

**8.151 APPLICANT'S RESPONSE TO WRITTEN QUESTIONS -
COMPULSORY ACQUISITION AND TEMPORARY POSSESSION OF
LAND AND RIGHTS**

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1 RESPONSE TO EXAMINING AUTHORITY WRITTEN QUESTIONS (COMPULSORY ACQUISITION AND TEMPORARY POSSESSION OF LAND AND RIGHTS)

Table 1.1: Responses to the Examining Authority's Written Questions (Compulsory Acquisition and Temporary Possession of land and rights)

PINS ID	Question / Response
CA.2.1	<p>Question:</p> <p>Quality of replacement open space at the point it becomes accessible to the public The ExA note the response provided at D6 [REP6-064, 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 (WVP). 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 (eg use of mature replacement planting, enhanced facilities, screening etc) and how/ where could these be secured?</p> <p>Response:</p> <p>The Applicant notes that landscape interventions within the replacement open space are relatively standard. The landscape interventions to the replacement land will feature a variety of landscape features. Retained existing woodland belts will provide maturity to the landscape. Proposed woodland planting will have an establishment period to maturity that will vary depending on the maturity of planting at creation. Woodland planting growth rates vary from species to species and are dependent on a variety of matters such as soil conditions and, watering. Typical annual growth rate can range from 20cm to 60cm. The establishment and maturity of woodland planting can be aided by utilising contract growing procurement to allow for proposed plantings to mature offsite in nurseries prior to planting out. This serves the dual purpose of safeguarding planting stock. Hedgerow formation could be aided by this methodology as well. Meadow grasslands do not require substantial time periods to bed in and will establish within a growing season and will continue to mature and develop through management as identified within the Outline Landscape and Biodiversity Management Plan (LBMP) [AS-029]. Maintenance and management regimes will help to shape how these thrive over time. The proposed pathways will be delivered and provide instant access into the landscape whilst the planting areas establish. The central amenity grassland within WVP will be retained and will provide a multitude of leisure activities throughout. These and other additional measures could be secured via the discharge of Requirement 9 of the draft DCO [TR020001/APP/2.01].</p> <p>The consideration of these additional measures could be secured through addition to the Outline LBMP [AS-029]. Whether and how they are employed, would be considered in the final LBMP required to be approved by the relevant planning authority under Requirement 9 of the draft DCO [TR020001/APP/2.01]. It was not considered necessary to include these additional measures in the Outline LBMP as the landscape and habitat proposals, and the monitoring, maintenance and management measures required and secured, achieve the required standard to mitigate the effects of the Proposed Development.</p> <p>Enhancements to the existing Wigmore Valley park through a new play area, skate park, pathways and pavilion are to be delivered under the Green Horizons Park (GHP) planning consent (LBC ref: 17/02300/EIA) and will provide a substantial upgrade to the baseline situation. The existing area of WVP covers 41.6ha, this includes a mixture of land defined as 'District Urban Park and Garden' (of 35.5 ha) and 'Natural and Semi-Natural Greenspace'. Following completion of enhancements to open space and creation of new Replacement Open Space provided as part of the Proposed Development, WVP will be at least 47.5ha in size, comprising a 14.4% increase.</p>
CA.2.2	<p>Question: for Applicant and LBC</p> <p>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 this would mean Wigmore Valley Park would not need to be removed from public use until Phase 2.</p> <ol style="list-style-type: none"> 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. 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.

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	<p>Response:</p> <p>The Applicant notes that in regard to details of locations/alternatives considered for the provision of parking, these are detailed within the response to item 19 in the Applicant's response to Deadline 4 Hearing Actions [REP4-070], which directs the reader to the locations identified for car parking sites (including brownfield sites) and the appraisal process and key considerations in determining the combination of car parking included within the Proposed Development. Land available for car parking provision was considered at each of the "Sift" phases and is considered up to date as no new known areas have become available.</p> <p>An alternative location for the multi-storey car park (MSCP) is suggested by WVP in their Deadline 6 submission [REP6-127] which states "The main through road for the airport is Percival Way, to the north side of this road from Provost Way to Prospect Way; the land usage consists of a few industrial units, the vast majority unused, various small non passenger use car parks, and unused derelict space. This land is ideal for development of a multi-storey car park complex".</p> <p>This area was not selected as a potential area for car parking within the development of the proposals due to the following reasons:</p> <ol style="list-style-type: none"> 1. The land is zoned as employment land by the Local Planning Authority (LPA). The LPA were opposed to the change in use of this land to car parking on a prior application, so this was taken into account in developing the proposals for the expanded airport. 2. The area identified has numerous existing tenants/occupiers, many of whom are important employers including Bedfordshire Police and the British aviation training school. 3. MSCPs are not typically used for Long Stay car parking but rather for short term which has a significantly higher rate of occupancy turnover and attract a premium tariff (as MSCP's are usually adjacent to the Terminal so offer a higher level of service and convenience) required to make the carpark cost effective. 4. If the MSCP is positioned so that it doesn't impact the existing tenants, nor the construction of the Airport Access Road required to be in operation at Phase 2a, the plots of land available are too small to be able to accommodate the parking required to replace the P6 and P7 long stay carparks proposed at Phase 1 even with the construction of a MSCP. Therefore, parking provision would still be required within the WVP at Phase 1. <p>The alternative is to construct a temporary MSCP which would be operational for circa 5 years (2027- 2033). It was deemed that this was not a cost effective nor sustainable solution and still could not provide the spaces required to replace the P6 and P7 carparks. Therefore, parking provision would still be required within the WVP at Phase 1.</p>
CA.2.4	<p>Question:</p> <p>Previous informal use of the proposed replacement open space</p> <p>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.</p> <p>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:</p> <ol style="list-style-type: none"> 1. Provide an assessment of how, in your opinion, s31 of the Highways Act 1980 applies to this land and any implications of 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. <p>Response:</p> <p>1. Does signage operate to erase rights that may have arisen prior to its erection?</p> <p>The first part of the Examining Authority's question asks whether the Applicant's recent erection of signage would operate so as to 'erase' any rights that have arisen prior to its erection. The question does not state explicitly what the source of the rights postulated as having been established is. However, as reference is made later in the question to both s31 of the Highways Act 1980 and Commons legislation, both are addressed.</p>

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	<p>In relation to rights arising under s31 of the Highways Act, the recent erection of the notices would not 'erase' rights established to exist by virtue of use throughout the 20 years prior to their erection. However, no such rights have been established and the Applicant reserves its position in relation to any further evidence produced in this regard.</p> <p>Further and in any event, for the reasons set out under point 2 below, establishment of the existence of a highway (whether under s31 or otherwise) would not mean that the land was public open space within the meaning of s19 of the Acquisition of Land Act 1981 (as applied by s131 of the Planning Act 2008), or that the proposed Replacement Land could not be used for that purpose.</p> <p>In relation to rights arising under the Commons legislation, the Applicant's position is again that the recent erection of the notices would not 'erase' rights established to exist by virtue of use throughout the 20 years prior to their erection. However, for the reasons set out under point 3 below, there is currently no legal scope for rights of common or for a town and village green (TVG) to be established by such long use.</p> <p>2. Assessment of how s31 of the Highways Act 1980 applies to the Replacement Land and implications for its use as open space</p> <p>The Applicant notes that the Friends of Wigmore Park ('FWP') are seeking to collate information as to the long-term informal use of the land. It is unclear whether this will be for use as a right of way, or as public open space (the two points being conceptually and legally distinct). Whilst the Applicant considers that it is unlikely such evidence will be capable of being established, it reserves its position pending receipt of the same and will comment upon such evidence in detail if and when it is received.</p> <p>However, even if such evidence were produced and found to be persuasive, the existence of footpaths deemed to be dedicated as highway under s31 would not impact upon the use of the proposed Replacement Land as open space. This is for the following reasons:</p> <p>(a) The fact that the tracts of land used for walking were deemed to be highway under s31 would not mean that they were open space within the meaning of s.19 of the 1981 Act. Open space is land used for the purposes of recreation, whereas a highway is used to pass and repass (in this case, only on foot – a footpath). The two are conceptually distinct.</p> <p>(b) The relevant guidance at Annex A, paragraph 9, Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land (DCLG) (September 2013) (the Guidance) does not state that land which is subject to rights as a public footpath cannot be used as replacement open space, where the proposed open space use would not be inconsistent with the continued exercise of the deemed highway rights. In the present case, the areas of land in question would be kept open meaning that they could be used both as a footpath and for walking recreation.</p> <p>The Applicant reiterates its primary case that there is no evidence of long user over a defined area such as to have accrued rights of way to the public over the proposed replacement land.</p> <p>3. Assessment of how the Commons legislation applies to the Replacement Land and implications for its use as open space</p> <p>The Commons Registration Act 1965 and the Commons Act 2006 allow for the registration of "common land" including rights within such land. The Commons Act includes provision to register a "town or village green". Under section 10 of the Commons Registration Act 1965, registration shall be conclusive evidence of the existence of common land. Section 15 of the Commons Act makes similar provision. The Replacement Land is not registered and is not a common or a town or village green (the latter of which is land used for the purposes of public recreation) for the purposes of s19 of the Acquisition of Land Act by virtue of such registration.</p> <p>Moreover:</p> <ul style="list-style-type: none"> - Section 6(1) of the Commons Act prevents the creation of new commons by virtue of prescription after 12 August 2007. As such, there is now no scope for the proposed Replacement Land to be registered as a common by virtue of long use. - Section 15C of the Commons Act excludes the right for applications to be made for new town or village greens where one of the 'trigger events' set out in Schedule 1A has occurred in relation to the land. Schedule 1A, paragraph 9 includes, within the list of trigger event, the publicization under s56(7) of the Planning Act 2008 of an application for development consent made under s114 of the same Act. This trigger event has occurred in relation to the land which is the subject of the Application, including the proposed Replacement Land. As such there is currently no scope for the proposed Replacement Land to be registered as a town or village green by virtue of long use.

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	In the circumstances, the Commons legislation has no implications for the use of the proposed Replacement Land as open space
CA.2.5	<p>Question:</p> <p>Wigmore Valley Park Asset of Community Value (ACV) and Compulsory Acquisition The ExA understands that Wigmore Valley Park is an ACV.</p> <ol style="list-style-type: none"> 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 ie could there be a Category 2 interest? <p>Response:</p> <ol style="list-style-type: none"> 1. The Applicant does not consider that the ACV status of Wigmore Valley Park impacts upon the compulsory acquisition of land within it. In accordance with the provisions of the Localism Act 2011, only a “relevant disposal” will trigger the ACV process. These relevant disposals are set out in section 96 of the Localism Act 2011 and refer to disposals of freehold or grant of a lease. However, compulsory powers are not a “disposal” as the local authority is not a party to any bilateral transaction. Rather, the land is unilaterally acquired using compulsory powers from the local authority, who then have a right in compensation. The ExA should note that while the Applicant retains compulsory powers to ensure its Proposed Development may be implemented, its intention has always been to enter into a voluntary agreement with the council for the land. That agreement would fall within the scope of a “relevant disposal” and trigger a moratorium under the Localism Act 2011. 2. The Applicant does not consider an ACV interest to be a Category 2 interest. A person is within Category 2 if they are interested in the land or have the power to sell and convey or release the land (sections 44 and 57 of the Planning Act 2008). No person has such an interest owing to the ACV status until such time that the owner seeks to dispose of the land, the person makes a successful application to bid for the land, and they subsequently acquire a property right, e.g. an option to buy the land.