



Hertfordshire Host Authorities

HERTFORDSHIRE HOST AUTHORITIES' RESPONSE TO THE RULE 17 LETTER

London Luton Airport Expansion



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1 INTRODUCTION

1.1 PURPOSE OF THIS DOCUMENT

- 1.1.1. This document has been prepared jointly by Hertfordshire County Council (“HCC”), Dacorum Borough Council (“DBC”) and North Herts Council (“NHC”) in collaboration with their technical consultants, referred to together as the “the Hertfordshire Host Authorities”. The Hertfordshire Host Authorities note the Examining Authority’s ‘Rule 17’ request for further information and written questions, dated 17th January 2024.



2 THE HERTFORDSHIRE HOST AUTHORITIES' RESPONSES TO THE EXAMINING AUTHORITY'S RULE 17 LETTER

Table 2-1 – REP4-103: Applicant's Response To Deadline 3 Submissions - Appendix H Hertfordshire County Council, Dacorum Borough Council And North Hertfordshire Council [REP3-090]

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<p>Design</p> <p>Paragraph 1.2.2(i) of the Design Principles [REP7-034] sets out the Work Nos. that would be subject to design review. Should any other works be subject to design review? If yes, please provide details of the Work No. and the reason for this.</p>	<p>The Hertfordshire Host Authorities are of the view that the more substantive and public facing aspect of the proposal would benefit from independent design review and the proposed Terminal 1 extensions (Work No. 3a), car park P12 (Work No. 4r), Coach Station (Work No. 3d) and Direct Air-Rail Transit Terminal 2 Station (Work No. 3g) would fall within that category. However, the Hertfordshire Host Authorities are content for the scope of independent design review to be progressed by Luton Borough Council as the relevant planning authority.</p>
<p>Road Safety Audit</p> <p>In the post hearing submission for ISH7 [REP6-065] the Applicant stated that it was the intention that full completed road safety audits would be provided for D7. These have not been provided.</p> <p>Relevant Highway Authorities: Comment at D9 on the response provided by the Applicant at D8. If matters remain outstanding at this point explain what you consider needs to be done to resolve them.</p>	<p>Road Safety Audits (RSA) have been received for the three Hitchin junctions where mitigation is proposed, based on the Schedule 1 mitigations.</p> <p>There have been subsequent discussions and alternative mitigation schemes have been provided to the Hertfordshire Host Authorities. However, there have been no safety audits of the alternative mitigations provided. The Hertfordshire Host Authorities position remains that the Schedule 1 schemes are not acceptable, and the alternative proposals require further technical evidence including RSA to be given full consideration.</p>
<p>Noise and Air Quality</p> <p>Requirement 23 – Exceedance of limit</p> <p>In the ExA's schedule of changes to the draft DCO [PD-018] the ExA has suggested the insertion of a new sub-paragraph between 14 and 15 which would impose a financial penalty on the undertaker for persistent breaches of a limit. The Relevant Planning Authorities should confirm what they consider to be an appropriate penalty scale and penalty time period (eg £/day or alternatively £/month), ideally with reference to any existing penalty scales.</p>	<p>It is difficult at this stage for the Hertfordshire Host Authorities to set out in any detail what is considered to be an appropriate penalty scale and period. This is primarily because the Green Controlled Growth (GCG) Framework is a novel concept. Ultimately, the Hertfordshire Host Authorities consider any mechanism put in place needs to, as previously submitted, act as a proportionate incentive for the Applicant to pursue growth on a precautionary basis, whilst equally acknowledging that growth should not be constrained where it can be achieved sustainably.</p> <p>In terms of the scale, the Hertfordshire Host Authorities note that the ExA have suggested that the Secretary of State could be responsible for setting the framework for any sanctions regime for persistent breaches. The Hertfordshire Host Authorities would support this in principle, as ultimately, they are not expert in these sorts of matter. It is also important to recognise that while it is useful to use the language of "fines", "sanctions" and "penalties" as a short hand, payments of this nature must be seen for what they are which is an obligation to pay compensation to the communities affected adversely by the authorised development persistently operating in breach of environmental Limits.</p> <p>However, if it assists the ExA, it may be helpful to consider analogous scenarios at other airports. For example, Brussels Airport's owner was fined €6million + €20k per day whilst an environmental limit breach continued. As set out above, any penalty must be sufficiently high to render the financial benefits of persistently breaching the limit unwarranted. Guidance is therefore also drawn from applicable sanctions under the data protection regime, which can be up to 4% of total global turnover or €20million; these values are taken to be within a comparable ballpark to those applied at Brussels Airport.</p> <p>Specifically in terms of period, the Hertfordshire Host Authorities do not have a strong view – per day or per month (or even per quarter) would be equally acceptable but should, it is submitted, tie into the relevant monitoring periods under the GCG Framework and any relevant Monitoring and Mitigation Plan, to ensure that the Applicant is not subject to any penalty for a period for which it is not in breach and vice versa. It is important to note that any noise contour limit breach can only be applied over a penalty time</p>



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	<p>period of the 92-day summer period, as the limit applies to this period, rather than days or smaller periods within this.</p> <p>Taking noise as a specific example, noise contour area Limits are introduced to provide communities with certainty, so the act of persistently breaching the limit should automatically lead to a lump sum being applied, with a scaling factor per dB increase above the limit also applying. Any financial payments should be paid into the Community Fund as proposed to be secured by the section 106 agreement to ensure use of any sums for the benefit of the communities affected by the breaches.</p>
<p>Noise and Air Quality Quota Count Budgets The ExA requests that the Relevant Planning Authorities provide comments on whether quota count budgets should be on the face of the draft DCO or whether the ExA's expression of the Limits combined with the requirement to use these to determine quota count budgets, as set out in the ExA's schedule of changes to the draft DCO [PD-018], would provide sufficient comfort in respect of quota-related noise controls.</p>	<p>Sufficient comfort is provided by the ExA's expression of the Limits combined with the requirement to use these to determine Quota Count (QC) budgets, as set out in the ExA's schedule of changes to the draft DCO [PD-018].</p>
<p>Shoulder period ATM Cap The ExA requests that the Relevant Planning Authorities provide comments on whether the proposed level of cap as set out in the ExA's schedule of changes to the draft DCO [PD-018] would be appropriate for the shoulder periods, if not what should the cap be and why?</p>	<p>The Applicant's states in their response to this question, "<i>The controls proposed represent the most restrictive noise controls in UK aviation.</i>"</p> <p>The controls proposed are viewed by the Hertfordshire Host Authorities as less restrictive than those currently in place at London Luton Airport, as can be seen from the (only) table in Appendix 1 (noise control benchmarking) in Applicant's Response to Issue Specific Hearing 9 Actions 8, 19 and 20 - Quota Count Noise Controls [REP7-077]. The Hertfordshire Host Authorities note again (as they did at Issue Specific Hearing 8) that the QC budgets marked within the summer and winter Limits columns are not controls, as these only assist in planning for the noise contour Limits.</p> <p>Taking Stansted Airport as a reasonable comparison to London Luton Airport, the table in Appendix 1 also shows that Stansted is subject to more noise controls than London Luton Airport is proposing, and so the basis of the Applicant's stated position is questioned. Manchester and Bristol Airports are also taken as having similar levels of noise control placed on them, demonstrating that London Luton Airport is not being subject to excessive controls and that the inclusion of an early morning limit would be appropriate (as the question pertains).</p> <p>Within the same question response, the Applicant also puts forward an annual aircraft movement limit in the morning shoulder period of 0600-0700 of 13,000 movements. This value is not accepted; no justification has been provided for this figure nor is it demonstrated whether the noise assessment undertaken by the Applicant can accommodate this figure.</p> <p>Provision of the morning shoulder period (0600-0700) limit would in effect provide a proxy limit on the evening shoulder period (2300-2330), noting that there is already a core night period movement limit (2330-0600), the night-time summer contour and the potential annual 24-hour movement limit, all of which envelop this period. For the avoidance of doubt, the full night period is 2300-0700.</p> <p>The Hertfordshire Host Authorities take the view that given the very sensitive nature of the shoulder periods the operator should be required to provide an evidenced assessment of the lowest possible number of movements that Air Traffic Movements (ATMs) could be restricted to in order to facilitate the proposal. That would then be available for all parties to review and comment.</p> <p>In advance of that, while all airports are different and have their own characteristics and features, the Hertfordshire Host Authorities consider that Stansted Airport may provide some guidance in determining</p>



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	<p>an appropriate figure for an aircraft movement limit in the morning Shoulder period of 6 to 7 am. Like London Luton Airport, Stansted has a high proportion of its passenger traffic carried by Low Cost Carriers with significant numbers of aircraft based at the airport. Stansted also handles a significant volume of air freight most of which is flown on pure freighter aircraft which also operate in the early morning period. Stansted is currently handling some 28 mppa and may therefore act as an analogue for what might be achieved at a 32 mppa London Luton Airport.</p> <p>In the current winter season and the forthcoming Summer 24 season, Airport Co-ordination Limited (ACL) has approved slots for both airports: at these airports, all aircraft movements require a slot from ACL to operate legally. At Stansted, 5.0% of slots were in the period between 6 am and 7 am, whereas at London Luton Airport the figure was 5.9%. This shows that a busier airport can operate with a lower proportion of flights in this hour, perhaps illustrating that there has been some peak spreading as traffic levels have increased.</p> <p>Applying this lower proportion to Luton Rising's (LR's) passenger ATM forecasts for a 32 mppa Luton (177,110 per annum) points to a Shoulder period limit at London Luton Airport of 8,829 movements per annum. Freighter aircraft generally operate at a lower utilisation (viz. flying hours per day) so should not be too inconvenienced by having operations delayed until after 7 am. The Hertfordshire Host Authorities also note that while LR's passenger ATM forecast was regarded as reasonable for assessment purposes they were also advised that it was likely to be an over-estimation, which in turn would suggest a shoulder period cap below the 8,829 figure derived above.</p>