

# LADACAN response to Rule 17 letter 31 Jan 2024 IP ref 20040757

This is LADACAN’s response to the ExA’s question regarding **Noise insulation delivery programme** copied below from p2 of the Rule 17 letter dated 31 January 2024:

*“LADACAN's D9 and D8 submissions [REP8-075] suggest that an increased rate of noise insulation must be secured for it to be relied on as noise mitigation or compensation. The Applicant references back to [REP4-079] and [REP7-056] suggesting that these documents address the 'reality of this challenge'. These submissions explain how accelerated roll out could be achieved within a four-year period. The updated Compensation policies, measures and communities document does not commit to a timetable, instead referring to taking 'all reasonable steps' to ensure delivery of insulation in an 'efficient and effective manner'.*

*Applicant: explain whether a specific commitment to a four-year timescale could be secured by the DCO and if not, how the DCO would ensure timely avoidance of any significant adverse noise effects.*

*LADACAN and Relevant Planning Authorities: confirm whether the revised wording in [REP7-036] satisfies concerns relating to speed of roll out and if not, what alternative provision would be required to secure it in the DCO.”*

Since the R17 letter was issued, the “Draft Compensation Policies, Measures and Community First” document has been substantially revised and so LADACAN is commenting on REP9-032 rather than REP7-036 in respect of the Noise insulation delivery programme (“the Programme”).

Since REP9-032 has been substantially revised, we first reviewed the overall document and have made comments in Sections 1-7 of the response regarding areas where it still appears to fall short of delivering what is necessary to meet obligations and commitments should the Application be granted. We trust the ExA will find this helpful.

In Section 8 we provide comments on provisions which we believe ought to appear in the DCO.

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### 1) Unreasonable small-print

The disclaimer above Table 1.1 on PDF page 4 appears to be unreasonable in the context, and is likely to be offputting if reflected in a letter offering noise insulation to a property owner. It says: *“Indicative Guide to Discretionary Compensation*

*Note: The table provided is an indicative guide only and has been simplified for convenience. The table only sets out indicative claims for statutory compensation, it does not mean that there is an automatic right to compensation. A claim must be made and the outcome of any claim will depend on its own facts and whether it meets the necessary criteria for a claim as provided for in the relevant Act and compensation code. Professional advice should be sought.”*

Our comments:

- a) The heading says “discretionary compensation” yet the text says “statutory compensation” – which is it?
- b) The text says a “claim” must be made, but throughout REP9-032 the compensations are described as an “offer” by the Applicant. If such an offer (to which property owners would be entitled because of development proposed by the Applicant) is couched to people as involving a claim which may or may not be successful, it may deter them from applying.
- c) The text refers to “the relevant Act” and to “professional advice” being required. These imply that complicated and potentially costly obligations would fall on the claimant.

Conclusion: the small print is not in keeping with the bold PR-style claims. This is inappropriate. It may be necessary to establish the terms or formulation of a proforma offer letter at this stage.

### 2) Inconsistency in the specification of Scheme 3

REP9-032 specifies five air noise schemes. Scheme 3 is defined on PDF pages 10, 17 and 18 as: *“c) Air Noise Scheme 3 – Properties inside the night-time 55dBLAeq,8h contour and outside the daytime 60dBLAeq,16h contour;”*

in other words, “inside the 55dB night contour but outside the 60dB day contour”.

This specification is at odds with that in 6.1.5, which we think is the correct definition:

*“The proposals provide eligibility from 54dBLAeq,16h and include the night-time 55dBLAeq,8h to determine properties exposed to significant observable adverse effects.”*

which omits the “outside the 60dB day contour” requirement, as does the wording in the key to the contour maps on PDF pages 36, 38, 40, 44 and 48 which define Scheme 3 as:

*“Scheme 3 - 55dB LAeq,8h Night-Time Contour”*

It is clear from the contour maps which show both the 55 dB LAeq,8h night-time contour and the 60dBLAeq daytime contour that the outlines are nearly identical, with the northern edge of the blue (60dB) line in fact falling outside the dashed blue-orange (55dB) line on its northern edge. Therefore, if the Scheme 3 specification is intended to apply only to properties “inside the 55dB night contour but outside the 60dB day contour”, it would be worthless. This should be corrected.

### 3) Ground Noise

Eligibility for a Ground Noise scheme is confirmed in Table 1.1 column 10, but is distinguished from a Highway Noise scheme in column 11. This distinction carries forward into the relevant sections where paragraphs 6.1.24 - 6.1.28 describe the Ground Noise criteria and process in terms of noise from aircraft on the ground, and paragraphs 6.1.29 – 6.1.31 the Highway Noise criteria in terms of additional road traffic.

Our comments:

- a) Noise from aircraft on the ground, and noise from additional traffic are cumulative, yet 6.1.28 and 6.1.43 limit provision to one Scheme. This is unreasonable: since the noise is cumulative the schemes should be cumulative if they apply to different parts of the property.
- b) Paragraph 6.1.27 describes modelling of free field ground noise from aircraft movements: is the ExA satisfied that such a model exists and has been adequately calibrated and tested?
- c) Paragraph 6.1.47 indicates a contribution of £4,500 for ground noise insulation: is the ExA satisfied that this is sufficient bearing in mind these properties would be those closest to the Airport?
- d) Paragraph 6.1.29 mentions the Applicant monitoring traffic levels on Crawley Green Road: is the ExA satisfied that there is sufficient independent scrutiny of this proposal?
- e) Paragraph 6.1.30 describes "monitoring of airport trips" in a non-specific way without clarifying who will do the monitoring, how and when it will be done, how it will be independently verifiable as fair and adequate, and which body would verify it. The referenced section 4.2 of Appendix 16.2 (REP4-023) identifies the model but does not clarify the responsibility or oversight.
- f) The Applicant provided a breakdown of the £60m insulation funding in REP7-072 based on an estimate of *actual* (not *maximum*) costs per property, as advised in response to REP8-078 item ISH9-AP37, but also confirmed that Ground Noise costs were not included. This needs to be addressed and corrected.

#### 4) Insulation Eligibility Cut-off

REP8-078 Appendix C argues that the principle of exclusion after October 2019 is unreasonable. Whilst paragraph 6.1.16 of REP9-032 allows that planning permission may have been applied for at an earlier date, it fails to address the predicament of people who newly move to the area, tenants in substandard properties, or the responsibility of relevant local planning authority which granted permission for the property to be built. It is unreasonable for people now living in such properties to be denied compensation for environmental noise due to the proposed development. It is also unreasonable for an offer, if not taken up in the limited period, not to be repeated for 5 years.

#### 5) Transition arrangements

It is unclear why no comparison is provided between the Proposed and Existing schemes for the year 2027. Such a comparison is likely to be of value during the transition period, since this would indicate whether there would be likely to be any difficulty caused by eligibility changes.

It should further be noted that in the 19mppa permission letter APP/B0230/V/22/3296455 under 'Agreed Matters' (PDF page 30) it states in relation to the funding of insulation:

*"The proposal provides for an enhanced Noise Insulation Scheme (NIS), secured by planning conditions and obligations, providing a fund of £4,500 per property (index linked) with an uncapped annual fund. The Applicant [LLAOL] intends to allocate £8.5M to the scheme to ensure all properties meeting the relevant criteria can be insulated within 5 years." (our underline)*

#### 6) Proposed process

The Process description has been updated and improved since REP7-036 but involves multiple agents, so we have reviewed for possible issues. In summary the Process responsibilities are:

**The Applicant is designated as being responsible for:**

- preparing a roll out plan and timetable for consultation with the Noise Insulation Sub Committee (“NISC”) and approval by Luton Borough Council (“LBC”) (6.1.36-37)
- applying at any time, after consulting the NISC, to LBC to vary the roll-out plan (6.1.38)
- providing information, guidance and annual feedback to the NISC (6.1.39-40)
- maintaining the NISC of the LLACC, or an equivalent (6.1.42)
- writing to owners of properties eligible for noise insulation at each stage of the plan to invite applications and then arranging for a contractor to visit to prepare a schedule of work (6.1.42)
- in situations where multiple schemes apply, deciding relevance and compensation (6.1.47-48)
- being proactive in informing and communicating with homeowners (6.1.49)
- taking all reasonable steps to roll out the offer, and appointing multiple suppliers (6.1.50)
- (*presumably*) arranging a multi-stage information programme and publicity (6.1.51)
- providing property details to the contractor, who then has SLA targets (6.1.52)
- monitoring the performance of contractors (6.1.56)
- requiring contractors to offer suitable solutions for Listed Buildings (6.1.19)
- (*presumably*) contacting tenants and occupiers to invite applications (6.1.57)
- (*presumably*) providing support for the vulnerable people or non-English speakers (6.1.58)

**The Contractor is designated as being responsible for:**

- visiting to confirm eligible rooms, identify suitable insulation, and issue quote (6.1.52-54)
- (*presumably*) arranging manufacturers survey to finalise and confirm measurements (6.1.55)
- operating a complaints procedure and feeding back to Applicant (6.1.56)

**The NISC is designated as being responsible for:** (see C1.1.1 unless otherwise indicated)

- dealing with appeals if homeowners are dissatisfied with specification of work (also in 6.1.44)
- making decisions (C1.1.2) about prioritization of eligible properties
- receiving quarterly reports
- monitoring and providing guidance on feedback
- engaging to maximise takeup of insulation (*unclear how*)
- considering and commenting on administration, operation, and development of the policy
- reviewing levels of contribution over time
- engaging in consultation on testing policy

The NISC may have representatives from the Applicant, Airport Operator, LBC, Host Authorities, and other LLACC member organisations (C1.1.2)

**The Airport Operator is designated as being responsible for:**

- making payment to the contractor for authorised works (6.1.46)
- appointing the independent Chair of the NISC subject to consultation (C1.1.2)

The proposed development would, if permitted, commence prior to the completion of a previous development of the same site (Project Curium) which has a different and less onerous programme of work to deliver noise insulation, and that programme is (a) not yet complete and (b) subject to change if the permission for expansion to 19 million passengers per annum (“P19”) is invoked.

This situation makes it particularly important that transition arrangements adequately reflect the outstanding commitments to date, and outstanding funds due from the Airport Operator.

## 7) Comments on proposed process

These comments relate to the summary of process in the previous section.

- a) Wherever we have indicated “*presumably*” there is no explicit assignment of responsibility for the specified task: it would be advisable to rectify this otherwise there will be confusion over accountability.
- b) The NISC has no executive authority, and currently only meets once annually. LADACAN’s NISC representative advises that it reviews a generic list of addresses (specific house details are redacted) provided by the Airport Operator’s noise consultant and discusses priorities. This is far less onerous than what is now being proposed.
- c) It is unclear how NISC would engage to encourage take-up if specific address details are (as at present) redacted, as they also have been for test reports, nor how it would know which properties are rented and which owned.
- d) For NISC to provide a reasonable response time to property owner appeals, it would need to meet on an ad-hoc and probably much more regular basis, which its members may not wish or be able to accommodate.
- e) Receiving and reviewing quarterly reports would require NISC to meet at least quarterly in any case, rather than annually as at present.
- f) The majority of proposed NISC members appear not to be qualified to provide guidance on feedback, to engage in consultation on testing policy, or to encourage insulation take-up.
- g) Unless the roll-out plan is an overall full-life Programme plan which reflects the budgets as indicated in REP8-078 item ISH9-AP37 and reproduced below, and the timeframe agreed with relevant Host Authorities, it would be impossible for NISC members to review levels of contribution and progress against plan.

Scheme	No. of Cat 3 Properties - Core Case	Cost Per Property	Expected % Take Up	Budget Cost of Policy - Core Case	No. of Cat 3 Properties - Faster Growth Case	Budget Cost of Policy - Faster Growth Case	Additional Cost of 100% Take up - Core Case	Additional Cost of 100% Take up - Faster Growth Case
1	150	£ 20,000	80%	£ 2,400,000	400	£ 6,400,000	£ 600,000	£ 1,600,000
2	1300	£ 18,500	80%	£ 19,240,000	1300	£ 19,240,000	£ 4,810,000	£ 4,810,000
3	500	£ 20,000	80%	£ 8,000,000	650	£ 10,400,000	£ 2,000,000	£ 2,600,000
4	2450	£ 6,000	50%	£ 7,350,000	2550	£ 7,650,000		
5	3350	£ 4,500	50%	£ 7,537,500	3950	£ 8,887,500		
				£ 44,527,500		£ 52,577,500	£ 44,527,500	£ 52,577,500
			Contingency	£ 8,905,500	20%	£ 10,515,500		
	Total		Total	£ 53,433,000		£ 63,093,000	£ 51,937,500	£ 61,587,500

### Notes:

- Actual Budget in Funding Statement is £60m - high mid point between core and faster growth cases
- Estimated take up rates showed cost of faster growth case as £52.5m
- Contingency of 20% recognised uncertainty at submission stage
- Funding has cost of inflation added elsewhere, £60m being a Day One cost
- Cumulative take up columns show sufficient funding to complete 100% of Schemes 1-3 from contingency were that to arise

- h) Without timely and adequately granular information from all the relevant participants, it would also be difficult for NISC to comment on operation and development of the policy.

It appears from the above that the NISC is being nominated as Administrator of the Programme, but some of its participants are executive agents in the Programme, and the independent NISC members have no executive authority over them. This would seem to be a fundamental weakness in the proposal. The ExA may wish to consider whether some or all of the NISC responsibility for ensuring timely roll out would sit better with the Environmental Scrutiny Group, for example.

In any case, if the delivery of the Programme fell significantly behind schedule for any reason, it is unclear where effective responsibility and accountability would lie or how executive action would be incentivised to bring the Programme back on track. What sanctions are proposed for slippage?

It is worth noting that the existing noise insulation scheme appears to be governed by the Project Curium Section 106 Agreement, with LBC responsible for ensuring the performance of the Airport Operator of its obligations under that Agreement, but apparently having failed to do so. Involving the Environmental Scrutiny Group would externalise and further strengthen the oversight.

The word “suppliers” is introduced in the key commitment paragraph 6.1.50 – does this mean that suppliers are being distinguished from contract installers? If so, the commitment may not have the hoped-for effect. There should also be a commitment to appoint multiple installers – and to take all reasonable steps to ensure that the entire supply and installation chain is adequate to meet the required delivery timescales and standards, with professional accreditation and 10-year warranty.

We note that the contractor is required to operate a complaints procedure (in relation to its own work) rather than that being independent and verifiable. This is inappropriate particularly if there are multiple contractors marking their own homework. An independently provided, consistent and transparent complaints procedure with published statistics associated with the Luton Rising brand would no doubt help to incentivise the necessary quality assurance.

There is no mention of which independent body will perform pre/post-installation testing to verify adequate noise attenuation to ICCAN standards. Section 2 on page 7 of ICCAN’s March 2021 document “ICCAN review of noise insulation” provides the justifications for adequate testing of properties before and after noise insulation, and the setting of a noise reduction target. It states:

*“Only one airport was found to set indoor noise reduction targets. London City Airport set a target for their noise insulation works at the 57 dB noise contour and state the work must achieve “an average sound reduction not less than 25 dB averaged over 100 to 3150 Hz in accordance with BS EN ISO 16283-3:2016” (BRE, 2020)<sup>1</sup>.”*

The Executive Summary of REP9-032 states in relation to noise insulation:

*“In many cases the proposal is to go above and beyond the legal compensation requirements and current best practice to provide an offer that Luton Rising (the Applicant) believes is fair.”*

It is therefore reasonable and right for communities to expect the Applicant to honour this bold commitment and go above and beyond the best practice standard set by London City Airport.

It is unclear which agency would fund this testing; the Applicant (from the Funding Statement) or the Airport Operator. The procedures and measures required to ensure adequate noise reduction is delivered would be important quality and sufficiency assurances that need to be documented as part of the roll out plan, signed off after independent expert assessment – by the Technical Panel?

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<sup>1</sup> “A review of insulation standards, building regulations and controls related to airport noise insulation schemes.” Watford: © Building Research Establishment Ltd.

## 8) Provision in the DCO

Our comments in the previous Sections have highlighted Programme issues which still need to be clarified and resolved, regardless of the question posed by the ExA regarding provision in the DCO.

Resolving the comments would, we believe, go some way to making the Programme more likely to succeed in achieving its objectives. However, with the current lack of clarity over accountability and a lack of executive means by which slippage would promptly and effectively be remedied, the commitment in paragraph 6.1.50 alone is inadequate.

As indicated in Section 7 above, the key commitment in paragraph 6.1.50 is not clear and specific: by introducing the term “supplier” it blurs where additional resource would actually be provided.

In response to the specific question, we are of the view that to ensure compensation would be rolled out in a timely way parallel with growth, the key milestones and spending targets of the roll out plan would need to be part of the DCO. Ultimately, if adequate progress was not being made with compensation, then growth should be paused until the issues were rectified.

Provision should be also made to prevent applications under paragraph 6.1.38 from the Applicant to LBC (to modify the roll out plan) from reducing the timeliness of roll out or the effectiveness of the compensation, given that the NISC has no executive authority and the Applicant has a vested interest in achieving growth.

The obligation to be proactive in paragraph 6.1.49 is not specific, which is why we request that the DCO obligates the timely achievement of roll out against specific take-up targets as incentivisation.

We appreciate that there is a dependency on property owners responding to the offer, but that is where the commitment to be proactive needs to be incentivised. LBC had supported the 19mppa application partly on the basis that it would result in betterment for communities through the installation of noise insulation. So ultimately it could be for LBC to consider whether (for example) some bye-law or other statutory provision would be necessary to facilitate property owners being willing to assist improvement of the local housing stock by the implementation of the Programme. LBC as a unitary authority is responsible for Environmental Health matters relating to residents in its jurisdiction.