

London Luton Airport Expansion

Buckinghamshire Council Response to the Applicant's Response to Deadline 8 Submissions (REP9-051)

PINS REFERENCE: TR020001

February 2024

Directorate for Planning, Growth & Sustainability

Planning & Environment

Buckinghamshire Council

King George V House, King George V Road

Amersham, Buckinghamshire, HP6 5AW



CONTENTS

1.1	GREEN CONTROLLED GROWTH.....	3
1.2	SECTION 106 AGREEMENT.....	4
1.3	SURFACE ACCESS.....	7

1.1 GREEN CONTROLLED GROWTH

I.D	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response	Buckinghamshire Council's Response
ESG and Technical Panels Host Authority Representation, Composition and Funding				
3	[REP8-048] I.D. 2.11.4	The Council is concerned that as currently drafted Schedule 5 of the S106 does not provide a route for new members of the Noise Technical Panel (as a result of future changes to the noise contours) to access funding to undertake their role.	The Applicant would anticipate that if a new member were to join, that discussions around funding would be addressed at that time. The Applicant anticipates and commits to providing funding should that eventuality arise, but given it is a mere potential at this stage, does not consider that a commitment would be appropriate at this juncture.	<p>The Council notes the Applicant's response but disputes the suggestion that the funding of new members of the Technical Panels should or could be dealt with at a later date.</p> <p>The Council would suggest that given the certainty secured in the Technical Panel Terms of Reference, regarding the invitation of new members to the Technical Panels, the securing of associated funding should also be given certainty through the inclusion of appropriate wording in the s106 legal agreement. The Council would offer the following wording for insertion in to paragraph 1.1 of Schedule 5 of the draft S106 as a potential solution:</p> <p>The Applicant covenants to make annual payments to CBC, HCC, LBC and NHDC as inaugural members of ESG according to the table in this Schedule (the "Table") to assist them in meeting their obligations arising in relation to the ESG (or any successor body) and / or any related Technical Panel on account of the Authorised Development on the basis that doing so imposes on them additional cost burdens over and above their general duties and responsibilities and in particular discharging the obligations mentioned in the Table and any other responsibilities arising from their responsibilities on the ESG and /or Technical Panel. Where any new member of the ESG and / or Technical Panel is established, annual payments will also be made to the additional member(s) according to the table in this Schedule.</p> <p>While the Council would welcome the inclusion of this text in the s106 legal agreement, it considers that this should also be addressed through a side agreement given that the Council is not a named party to the s106 legal agreement.</p>

1.2 SECTION 106 AGREEMENT

I.D	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response	Buckinghamshire Council's Response
3	<p>[REP8-047] para. 2.52.1 page. 13-14</p>	<p>The draft S106 Agreement provided at Deadline 7 was updated by the Applicant's Solicitor on 19 January 2024. The Council has provided comments to the Applicant on this version of the Agreement; these are summarised as follows:</p> <ul style="list-style-type: none"> As both the express bus route from Aylesbury to Luton and the reinstatement of bus route 61 from Aylesbury to Luton are not specified for funding, this will become a matter for the Airport Transport Forum Steering Group to consider in the future through the allocation of the Sustainable Transport Fund. As a member of the Airport Transport Forum Buckinghamshire Council will be able to make representations at the appropriate time. It is vital that the Council's membership of the ATF is secured through the S106 Agreement. Furthermore, the Framework Travel Plan should require updates to the Bus and Coach Study with specific consideration of the bus route requirements between Aylesbury and Luton. The priority junction improvement at the B489 and B488 Ivinghoe should it be required to mitigate future impacts (type 2 mitigation) will be a matter for the ATF Steering Group to allocate funds through the TRIMMA. This re- enforces the point about the DCO ensuring Buckinghamshire Council's membership of the ATF. Buckinghamshire Council considers the TRIMMA fund to be insufficient and must be indexed linked. Lastly, Buckinghamshire Council should be named as a 'relevant Highway Authority'. Definition of 'Local Area' – this only refers to the 'Aylesbury Vale area of Buckinghamshire Council'. The Council considers that to align with the Local Procurement Protocol, the Employment & 	<p>In the Initial Statement of Common Ground (SoCG) between London Luton Airport Limited (trading as Luton Rising) and Buckinghamshire Council [TR020001/APP/8.18], the Applicant has responded to the comments that Buckinghamshire Council has raised in relation to the draft section 106 agreement provided at Deadline 7 that was updated by the Applicant's Solicitor on 19 January 2024. The Applicant has signposted the references to these responses below for Buckinghamshire Council's ease of reference:</p> <ul style="list-style-type: none"> Buckinghamshire Council's request concerning an update to the Bus and Coach Study has been responded in the Applicant's position under SoCG ID: 3.2.5 in relation to "Local bus routes in Buckinghamshire – route 61". Furthermore, Buckinghamshire's Council's concerns about their membership of the Airport Transport Forum (ATF) and further information on the Sustainable Transport Fund (STF) is within the updated STF Topic Paper and draft section 106 agreement. The TRIMMA [REP5-041] provides further information on how traffic impacts will be mitigated, including how residual impacts, such as those on the Ivinghoe junction, may be mitigated. Buckinghamshire Council's further concern on this have been responded to in the Applicant's position under SoCG ID: 3.2.1d in relation to "Impacts of airport traffic on Buckinghamshire communities – rural villages on B488/B489". Buckinghamshire Council's request to be named as a 'relevant Highway Authority' has been responded to in the Applicant's position under SoCG ID: 3.9.12 in relation to "Schedule 2, Part 2". 	<ul style="list-style-type: none"> The Bus and Coach Strategy has been updated at D8 to include the consideration of an hourly X61 service and a high speed route between Aylesbury and the Airport for discussion by the ATF Steering Group (SoCG ID 3.2.5 and 3.2.6). The updated S106 does name BC as a prospective member of the ATF Steering Group and prospective recipient of the RIF, but it fails to secure membership in perpetuity. Moreover, the Bus & Coach Study is not currently referenced in the Framework Travel Plan (D8). In relation to the TRIMMA the ATF Steering Group membership point remains as above. BC does not take issue over the categorisation of the Ivinghoe Junction as potential Type 2 mitigation, so reference to SoCG ID: 3.2.1d is irrelevant. The Applicant's response fails to address BC's concerns regarding the underfunding of the RIF, or the fact that the RIF is not index-linked. With regard to the relevant highway authority point BC is not asking to be a RHA as defined by the DCO, but rather seeking for the term in the s106 to be defined so as to include BC in the list of potential highway authorities 'relevant' to type 2 mitigation under the TRIMMA and RIF. Notwithstanding this fact the Council acknowledges the updates to paragraph 17 of the draft S106 agreement regarding Rights of Third Parties which goes some way to resolving part of this issue. Whilst the definition of 'Local Area' and the associated obligation have been lifted from the P19 S106, see link - TR020001-001868-Luton Borough Council - s106-Agreement.pdf (planninginspectorate.gov.uk), the local procurement protocol is an appendix of the wider ETS which states that "The key purpose of the ETS is to ensure that, as many of the jobs and economic opportunities generated by the Proposed Development as possible, go to the residents of Luton and the "ETS Study Area" (see 1.2.5 below) because they will have the skills and training required to do the jobs well and to help mitigate some of the other impacts on the ETS Study Area resulting from expansion." Given that Buckinghamshire as a whole is identified within the study area, BC consider that restricting the definition to Aylesbury Vale is contradictory. Moreover, the P19 S106 was agreed prior to the formation of Buckinghamshire Council as a Unitary Authority and the definition should be updated to reflect this, noting that the text has already been amended to refer to Buckinghamshire Council in the first instance. The Applicant's response to the noise technical panels issue is a misinterpretation of the Council's request and the SoCG ID referenced

Training Strategy and the Community Fund area that this definition should refer to the 'administrative area of Buckinghamshire Council'.

- Buckinghamshire Council will be invited to be a Member of the Noise Technical Panel should noise contour changes affect Buckinghamshire as a result of airspace changes. As such, Schedule 5 ('Green Controlled Growth Funding Elements') must enable funding to be provided to Buckinghamshire Council.
- In terms of Schedule 9 ('Sustainable Transport Fund') Buckinghamshire Council considers that the Applicant's 'Draft Compensation Policies & Measures and Community First' document should be appended to the S106 Agreement. Furthermore, in order to ensure an equitable distribution of the Community Fund, Buckinghamshire Council considers that the S106 Agreement should secure a commitment to spend at least a 40% commitment of the Community Fund on projects outside of the administrative area of Luton Borough Council.

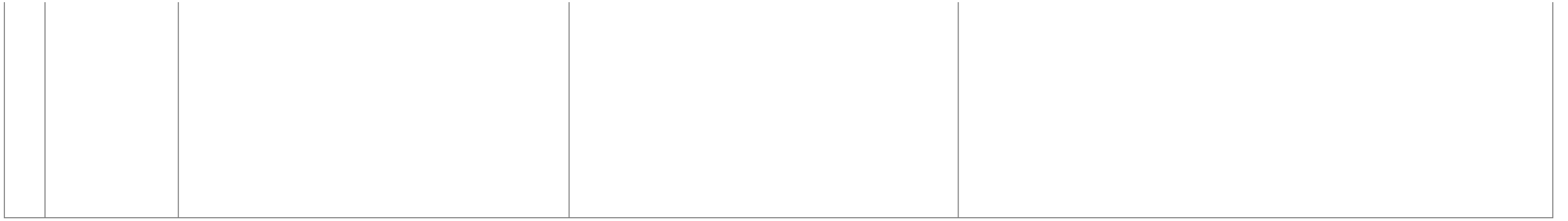
- In response to the request to amend the definition of the Local Area in the section 106 agreement, this definition is linked to the obligation relating to the Community Fund. This obligation and the definition of Local Area has been lifted directly from the P19 section 106 agreement. The fund it relates to is an existing fund which has already been established by LLAOL and it is included in the DCO section 106 agreement so that this fund will continue following the abrogation of the P19 section 106 agreement under the DCO.
- Buckinghamshire Council's claim that they should (in future) be invited to be a Member of the Noise Technical Panel if certain conditions are met does not correspond with the Applicant's detailed explanation of the Noise Limit Review process flagged in the Applicant's position under SoCG ID: 3.3.3 in relation to "Overflight of the Chilterns AONB – mechanism for assessment and control" and under SoCG ID: 3.5.1 in relation to "Environmental Scrutiny Group Membership".
- Buckinghamshire Council's request for an additional appendix to the draft section 106 agreement is responded to under SoCG 3.2.8 in relation to "Sustainable Transport Fund – benchmarking of funding". The Applicant's position on the level of funding for the Community First Fund is set out under SoCG ID: 3.7.3.

do not relate to the point raised. The response is also contradictory to the updated position within the Terms of Reference for the Technical Panels which states that the Noise Limit Review, triggered by publication of a new ICAO chapter or approval of a proposal for airspace change must:

- d. Identify whether changes to the forecast shape of the 54dB LAeq,16h and 48dB LAeq,8h noise contours have occurred, such that noise impacts are experienced by different local authorities from those originally identified and included as part of the Noise Technical Panel;
- e. Where (d) identifies changes to the forecast shape of the 54dB LAeq,16h and 48dB LAeq,8h noise contours, set out any necessary amendments to the local authorities included as part of the Noise Technical Panel.

It is on this basis that BC is suggesting that should it, or any other authority, be included as a member of the Noise Technical Panel as a result of a noise limit review then the S106 legal agreement should make allowance for the potential change in the technical panel membership to specifically include BC as a potential member and Schedule 5 amended commensurately to ensure relevant payments are made to any new member of the technical panel. It should also be noted that in its current form Schedule 5 fails to capture all additional members of the Technical Panel outlined in Table 2.1 of the Technical Panel Terms of Reference. Whilst not all of these members may be party to the S106 legal agreement the Council believes that the Applicant should set out clearly how the payments proposed for the host authorities (in their role on the Technical Panels) would also be secured for other authorities, either currently proposed or as a future addition to the membership. The Council would also draw the ExA's attention to its comments made above with regard to Schedule 5.

- In terms of the commitment to fund 40% of the Community Fund on projects outside the administrative area of Luton, Schedule 7 already secures the Compensation policies and Measures and Community First document. Schedule 9 should align with Schedule 7 and make reference to the document as well as specifically confirm the 40% commitment within Schedule 9.



1.3 SURFACE ACCESS

I.D	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response	Buckinghamshire Council's Response
Highway monitoring and mitigation				
14	<p>[REP8-047]</p> <p>para. 2.22.2</p> <p>page.9</p>	<p>The Council remains concerned regarding the way in which the value of the fund has been set, however this has not been addressed within this document. In addition for the OTRIMMA fund value, it is considered that it should be subject of an index linked mechanism; the Council considers that this is an omission in this regard in the latest draft S106 Agreement.</p>	<p>The Applicant has identified impacts as set out in the Transport Assessment [APP-203, AS-123, APP-205, APP-206] and is committed to mitigating these impacts in accordance with the TRIMMA process, which commits to the funding for those works.</p> <p>The Applicant also acknowledges that, due to the scale and long build-out period of the Proposed Development, unforeseen impacts may occur. The Applicant has therefore proposed the establishment of the RIF, which is not a planning requirement, nor a mechanism typically offered by any proposed development. The process that can be followed by highway authorities to access the RIF is described in the OTRIMMA [REP8-043]. The RIF is not index-linked, but at Deadline 9 the Applicant has added a new commitment under which a proportion of any surplus STF revenues may be made available for the RIF.</p>	<p>The Council notes the Applicant's response and in particular the new commitment that would allow for a proportion of the surplus STF revenues to be made available for the Community Fund, Community First and the RIF. Whilst the Council welcomes the Applicant's admission that there is a need to further increase the funds available elsewhere, including through the OTRIMMA, it is not felt that this goes far enough as it offers no certainty to the level of funds available. The Council would proffer that even based on crude calculations the costs of initial evidence gathering and scheme design across a handful of mitigation type 2 related proposals is likely to use up the funds in their entirety before considering the prospect of the implementation works themselves. As such the Council would suggest that 100% of surplus funds should be made available to the RIF in the first instance (due to the funds' original purpose being to support transport related matters) before any resultant residual funds being redistributed elsewhere.</p>
Sustainable Transport Fund				

32	<p>[REP8-047] para. 2.24.1 page. 9</p>	<p>This submission has been reviewed. The Council is now satisfied that the fund has been increased to a suitable level to be able to provide funding for schemes that are likely to be required to meet the sustainable transport mode targets. However, it is noted that no rationale has been provided for the determination of the fund size, rather only an explanation regarding the way the fund is to be amassed.</p>	<p>The fund size was initially based on similar levies implemented at Stansted Airport to fund their Sustainable Transport Fund, at £0.25 per parking transaction and £0.10 per pick-up / drop-off transaction. The levies for London Luton Airport were then altered to £0.20 and £0.30 respectively in order to:</p> <ul style="list-style-type: none"> • Generate higher annual revenues of the fund, to give greater stakeholder confidence in the ability of the fund to achieve the ambitious targets to be set out in future Travel Plans, and • To reflect the fact that pick-up / drop-off movements typically require more vehicle journeys than parking movements, and as such should be levied at a higher rate to greater discourage vehicle journeys. 	<p>The Council notes the Applicant's response and have no further comment to make.</p>
33	<p>[REP8-047] para. 2.24.2 page. 9</p>	<p>The Council also welcomes the introduction of the Pump Priming mechanism. It does note that this is a limited value fund of up to £1m and that this can be recouped from the STF, however, the Council is satisfied that it will enable the Applicant to bring forward some measures as the fund starts to build. It would be necessary that the recouping of the funds do not starve funds available in any given year.</p>	<p>Noted. This matter is addressed in section 1.7 of the updated STF to be submitted at Deadline 9 [TR020001/APP/8.119].</p>	<p>The Council has been unable to identify the D9 update referred to by the Applicant as there would appear to be no section 1.7 in the updated STF document.</p>

34	[REP8-047] para. 2.24.3 page. 9	An updated draft S106 Agreement was provided to the Council on 19 January 2024, to rectify the omission to index linking. The latest draft S106 Agreement now refers to index linked payments being applied to the STF cap and levies referred to in Schedule 9 ('Sustainable Transport Fund').	Please refer to the updated STF to be submitted at Deadline 9 [TR020001/APP/8.119] .	The Council notes the Applicant's response and have no further comment to make.
----	--	---	---	---