CENTRAL BEDFORDSHIRE COUNCIL COMMENTS ON DEADLINE 9 SUBMISSIONS

LONDON LUTON AIRPORT EXPANSION DEVELOPMENT CONSENT ORDER

Version – FINAL

Introduction

This document sets out the response of Central Bedfordshire Council (CBC) to various documents submitted at Deadline 9. The comments include input from technical consultants.

CBC consider that some submissions require a response where it is necessary to provide clarification. Where a document has not been responded to, this does not mean that the points are agreed.

1. **REP9 – 004 – Draft Development Consent Order**

CBC is continuing to engage with the Applicant and in particular has provided further feedback, in conjunction with the other Host Authorities, on the Protective Provisions for highways.

2. **REP9- 020 – GCG Explanatory Note**
3. **REP9-024- GCG Appendix A ESG Terms of Reference**
4. **REP9-926 GCG Appendix B Technical Panels Terms of Reference**

CBC remain concerned with the wording in respect to ESG Representatives as highlighted in REP9-020 and REP9-024, which is reflected in CBCs SoCG.

CBC are satisfied with the quorum requirements for the ESG and Technical Panels, as reflected in the CBC SocG.

5. **REP9-055 Applicant's Position on Noise Contour and Movement Limits**

Section 3 and Appendix A – Updated Faster Growth (UFG) Case - Applicant's updated noise contour limits

REP9-055 sets out the results of the 'Updated Faster Growth' (UFG) case, which is produced by the Applicant having "revisited the fleet transition assumptions in the light of more recent orders for new generation aircraft by airlines including easyJet and the trends of aircraft modernisation seen at the airport during 2023 and anticipated in 2024." [paragraph 3.1.6]. No updated Core Case is provided, which presumably would also decrease by the same or a similar percentage, due to the increased new-generation aircraft applying to both the UFG and Core Case scenarios. An updated Core Case would then be expected to lead to fewer properties again being exposed to above-SOAEL noise levels, with the Host Authorities agreeing with the ExA's approach "to avoid additional effects above SOAEL" [PD-018].

The Applicant's reasoning for using the UFG Case over the Core Case is that there is uncertainty in the forecasting and the Applicant is seeking to move this risk on to the local communities, rather than taking this risk on themselves. This reasoning, as set out in, for example, paragraph 3.1.3 of [the new document], is not acceptable. Such a passing of risk also does not apply the same push for airlines to re-fleet as fast as possible to enable growth as soon as possible; the benefits are already available due to the increased flexibility provided in the increased limits.

The Applicant should be applying limits to what they are applying for, i.e. the Core Case. By setting noise limits using the Core Case, as the ExA is minded, the same airport expansion is brought about, but in a more sustainable manner with noise effects that have been limited and reduced, where possible. It is not deemed necessary to cover again the same aviation policy points raised in the Post-Hearing Submissions to Issue Specific Hearing 3 [REP3-094], but the Host Authorities simply note that they take the same position here.

Section 4 – Annual Movement Limits – Applicant's position on annual movement limits

So far as the inclusion of a movement limit is concerned, the Applicant's position set out in Section 4 is contradictory. It is stated that such a limit is not required as it is not strictly correlated with population noise exposure. It is then argued, however, that if a limit were included it should be no less than 225,000 movements rather than the figure on which all environmental assessments set out in the ES have been based, namely 209,410. This argument suffers from the same flaw as that which seeks to use the Faster Growth Case, or Updated Faster Growth Case, to set noise limits rather than the Core Case. The passing of risk to the local community which should properly be borne by the Applicant or future airport operator is not acceptable.

It would be possible to operate 225,000 movements within a noise limit set for 209,410 aircraft movements if each of the higher number of movements were 0.3dB quieter. This difference in level is imperceptible to the human ear, meaning that the local community would experience 7% (or so) more flights that were perceptibly just as noisy as if the ES number had been maintained as a limit. No consideration has been given to the effect on overflights which are assessed as a supplementary metric in the ES, with results reported for all assessment years. These would all need to be revised upwards if the actual movements were 225,000 rather than 209,410. It is not appropriate to permit operations at a level that have not been fully tested in the ES, as no addendum overflight information has been provided along with that proposed movement limit.

The Authorities consider that appropriate movement Limits would be in fact be lower than currently forecast by the Applicant at some 207,000 annual aircraft movements, and 8,720 aircraft movements in the morning shoulder period. The basis of these figures is set out in Chris Smith Aviation Consultancy Limited (CSACL's) Review of the "Applicant's Position on Noise Contour and Movement Limits" [REP9-055].

The position remains that movement limits should be restricted to the absolute minimum required.

6. REP9-044 Sustainable Transport Fund

CBC have provided a number of comments to the applicant team with regards to the Sustainable Transport Fund, in particular:

1. The need for unspent surplus funding to carry over to subsequent years, allowing the fund to accumulate in value.
2. A need for a degree or greater flexibility in spend beyond the 25% of surplus proposed.
3. That the fund should continue to operate beyond the airport reaching the permitted throughput.
4. That the levies should be subject to a process for uplifting in line with indexation (or other agreed method) to help ensure the forecast future revenue levels.

It is understood that the applicant is due to submit a further update to the Sustainable Transport fund at Deadline 10 which is expected to address a number of these issues.

7. REP9-030 Design Principles

CBC are satisfied with the revisions and further commentary is provided in the CBC SoCG.

8. REP9-058 Applicant's Position Paper on Financial Penalties

The Applicant's Position Paper on Financial Penalties sets out the Applicant's objection to the proposal by the Host Authorities and the Examining Authority that financial sanctions should apply in the case of prolonged breach of a Limit under the Green Controlled Growth ("GCG") Framework.

The Host Authorities do not agree that the imposition of a financial sanction to compensate for breach of environmental Limits in such circumstances is unnecessary, unjustified, inappropriate, not in accordance with policy or specific tests for imposition of conditions, being proposed without a clear legal basis or is not appropriate in the context of a decision on a single DCO application.

Unnecessary and unjustified

The Host Authorities propose that a financial compensation payment to the Community Fund should apply where a Mitigation Plan has not been effective in removing a breach of a Limit within 12 months of its implementation (or within the relevant timetable contained within that Plan).

The Host Authorities do not agree that the fact that a Mitigation Plan has been approved by the ESG means that it is inappropriate to apply a financial compensation payment in the event that the Plan is not suitable to bring the airport back within the relevant Limit. It is for the Applicant to ensure that it is operating in compliance with the Limits in the GCG Framework. The ESG can only approve or not approve the plan put before it. A financial compensation payment would act as an incentive on the operator to ensure that Mitigation Plans genuinely put forward the best and most likely means of addressing the breach of a Limit within the timetable specified, whilst ensuring that the affected community is compensated in the event that this is not achieved.

The financial compensation payment 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 compensation payment would clearly be reduced. The quantum of financial compensation payment 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, whilst the community will experience the effects of the Applicant not meeting the Limits.

The Host Authorities are aware of the Applicant's position that such a 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 compensation payment 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, as is any approach similar to it, so it is reasonable there is some residual doubt as to its effectiveness.

Inappropriate given the existing mechanism for DCO breaches

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.

Does not meet planning policy tests / tests for conditions

The Applicant refers to paragraph 4.9 of the Airports National Policy Statement ("ANPS"), which states that "The Examining Authority should only recommend, and the Secretary of State will only impose, requirements in relation to a development consent, that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects."

The Host Authorities consider that:

- A financial compensation payment regime is **necessary** in order to provide a clear disincentive for the Applicant to breach a Limit, and if it does for it to address the breach and bring operations back within the Limit as soon as possible. Whilst there is an incentive to remain within a Limit to continue to grow, it is clear that the Applicant could benefit significantly from increased growth whilst persisting in breach of a Limit. As such a financial sanction is necessary to ensure that the airport operates within the environmental effects envelope set out in the Environmental Statement.

- A financial compensation payment regime is **relevant to planning** and **relevant to the development to be consented** because it is a necessary component of the framework to ensure that the airport operates within the environmental effects envelope set out in the Environmental Statement, and that the operator cannot benefit from increased growth whilst not complying with the Limits that it has proposed. It is clearly more than 'tangentially related', being the backstop in the event of a persistent breach of a Limit. Without it, there is nothing to disincentivise persistent breaches of the Limits.

- A financial compensation payment regime can be put in place which is **enforceable** and **precise**.

- A financial compensation payment regime is **reasonable in all other respects**. 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 [accessed 5 January 2024]. 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.

In the Host Authorities' view, absent an ability to 'reverse' growth in the event of continued breaches of Limits, 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 s.106 agreement, which already envisages 'penalty' payments for different breaches (by airlines) being paid into it).

The concept of a payment to a community fund to compensate for a breach of environmental limits is entirely consistent with the tests for planning conditions.

Does not meet specific tests for imposition of conditions

Sub-section (3) of section 120 of the Planning Act 2008 provides that an order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted. It is clear that provision of a financial compensation payment to the Community Fund is a matter relating to or relating to matters ancillary to the development, noting that it is a necessary component of the framework to ensure that the airport operates within the environmental effects envelope set out in the Environmental Statement.

Sub-section (8) of section 120 of the Planning Act 2008 provides that an order granting development consent may not include provision creating offences. It is not proposed that the regime for financial compensation payments in the event of a continued breach of a Limit would create any offences.

As such the Host Authorities consider that there is a clear legal basis for the inclusion of such a regime in the DCO.

9. REP9- 051 Applicant's Response to Deadline 8 Submissions

Draft DCO – 12 The applicant states that the Protective Provisions are considered sufficient and that moreover that these would be a better vehicle than individual Section 278 works, with part of the Rationale being that no detailed designs exist at this stage. In CBCs view, the lack of detailed design has been a point of concern and comment throughout the DCO process, and reinforces, rather than diminishes the importance of robust protective provisions, with the retained strong preference for entering into Section 278 agreements (which would also help address the comments made with regards to the involvement of multiple parties, where further agreements between Highway Authorities will be required).

CBC can confirm that the alternate drafting requested, has been issued to the Applicant in advance of Deadline 10, with the additional drafting intended to provide protections comparable to those under the relevant sections of the Highways Act and which are also reflective of the provisions which have been considered appropriate for National Highways. Whilst reference is made in the applicant's response to the works represent 'relatively minor modifications to the local road network', this is not a view shared by CBC, with major works proposed to extremely busy 'A' classification roads (with the forming of new traffic lanes, new central reservations and other significant works), having significant implications in terms of highway capacity, highway safety, and traffic management during construction.

CBC have reviewed the applicant's response with regards to the TRIMMA (Surface Access 29), and the position of the Council remains unchanged on this matter (as also reflected within the Statement of Common Ground).

CBC understand that a further iteration of the OTRIMMA is to be submitted at Deadline 10 and will therefore make any final comments upon this document at Deadline 11.

10. REP9-046 Book of Reference

It is noted that the Book of Reference includes slightly updated wording with regards to Plot 1-12, with the addition of reference to 'Woodland', which would appear to relate to the Section of land over which CBC previously raised concerns as falling outside of the public highway.

It is understood from the applicant team that the intention is to carry out the highways works as proposed within the DCO (works 6(e) b) and then to designate the land permanently as highway using the powers of the DCO, with the legal effect being to vest the highway in CBC.

CBC Assets (as the landowners for the parcel in question) have considered this proposed approach and are content with this.

[End of Document]