

Date: 06 September 2024
Our ref: 484225
Your ref: **Luton Airport Expansion**



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BY EMAIL ONLY

Dear Sir/Madam

Planning Act 2008 and the Infrastructure Planning (Examination Procedure) Rules 2010

Application by London Luton Airport Limited (“the Applicant”) Seeking Development Consent for the Proposed London Luton Airport Expansion (“the Proposed Development”).

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

We have the following responses to the Written Question that has been directed to us:

Q5. Enhancement – section 85 of the Countryside and Rights of Way (CRoW) Act 2000

Thank you for your letter of 23rd August 2024 inviting Natural England to comment on the information provided by the Applicant’s position regarding the section 85 of the Countryside and Rights of Way Act 2000, in paras 4:10-4:20, of the [Applicant’s letter, dated 19th August 2024](#).

Changes introduced to Section 85 of the Countryside and Rights of Way Act 2000 on 26th December 2024 by section 245 of the Levelling Up and Regeneration Act 2023 (LURA) establish an enhanced duty on relevant authorities to seek to further the purpose of conserving and enhancing the natural beauty of Areas of Outstanding Natural Beauty (AONB).

It is anticipated that the government will provide guidance on how the duty should be applied in due course. In the current absence of that guidance, and without prejudicing that forthcoming guidance, Natural England previously advised in our letter of 29th January 2024 (ref TR020001) that:

- ***the duty to ‘seek to further’ is an active duty, not a passive one. Any relevant authority must take all reasonable steps to explore how the statutory purposes of the protected landscape (A National Park, the Broads, or an AONB) can be furthered;***
- ***The new duty underlines the importance of avoiding harm to the statutory purposes of protected landscapes but also to seek to further the conservation and enhancement of a protected landscape. That goes beyond mitigation and like for like measures and replacement. A relevant authority must be able to demonstrate with reasoned evidence what measures can be taken to further the statutory purpose;***

- *The proposed measures to further the statutory purposes of a protected landscape, should explore what is possible in addition to avoiding and mitigating the effects of the development, and should be appropriate, proportionate to the type and scale of the development and its implications for the area and effectively secured. **Natural England's view is that the proposed measures should align with and help to deliver the aims and objectives of the designated landscape's statutory management plan. The relevant protected landscape team/body should be consulted.***

The new duty will apply to the examining authority's recommendation and Secretary of State's decision on this case. Therefore, the examining authority must satisfy themselves that the applicant has provided them with sufficient information to be sure that the design of the scheme has sought to incorporate measures which could further the purposes of the designated landscape. The new duty goes above and beyond mitigation, like-for-like measures and replacement. It requires proactive exploration of what is possible in addition to avoiding and mitigating the effects of the development to seek to further the statutory purposes of the protected landscape.

Natural England is not aware of any overarching document or record for this NSIP which evidences that proactive steps have been undertaken to identify such measures for potential delivery as part of this NSIP. In the apparent absence of such, it is unclear to us what information would enable the examining authority to consider that the measures proposed for mitigation, compensation and enhancement would satisfy the requirements under section 85 of the CRoW Act 2000.

The Applicant's 19th August response (paras 4:10 - 4:20) responds to the Planning Inspectorate's letter, date 2nd August 2024, ref: [TR020001-003457-LUTN-SoS-consultation-2-August-2024.pdf](https://www.planninginspectorate.gov.uk/tr020001-003457-LUTN-SoS-consultation-2-August-2024.pdf) ([planninginspectorate.gov.uk](https://www.planninginspectorate.gov.uk)) which requested that;

(para 4) "the Applicant is invited to set out what, if any, further measures it considers could be brought forward, should it be decided further mitigation and compensation is necessary to offset amenity and tranquillity effects on the Chilterns National Landscape", and

(para 5) "the Applicant is invited to set out what, if any, further enhancement measures it considers could be brought forward, should it be considered necessary to assure compliance with the amended duty in relation to the Chilterns National Landscape".

In relation to paras 4 and 5, it is unclear whether the Applicant has contacted the Chilterns Conservation Board to discuss the issue of mitigation, compensation and enhancement measures. Consistent with our previous and above advice, **we strongly advise that the Chilterns Conservation Board are consulted to explore what measures might be appropriate in relation to either case**, if they have not already been consulted.

The Chilterns Conservation Board (CCB) are Statutory Consultees for National Significant Infrastructure Projects (NSIPs). Their detailed knowledge of the Chiltern's Statutory Management Plan makes them well placed to offer advice on the type of enhancement measures that might be appropriate and would take forward the aims and objectives of the Protected Landscapes Management Plan and contribute to any relevant projects or initiatives.

Consulting the CCB, as Statutory Consultees for NSIPs and as lead convenors and implementors of the Statutory Chilterns Management Plan, to explore issues around mitigation, compensation and enhancement appears to Natural England to be a 'reasonable step' as outlined in the first bullet point of our LURA duty advice above, particularly in consideration of the Environmental Statement (para 14.3.2 TR020001/APP/5.04, 27 February 2023) conclusion that an increase in aircraft movements is assessed to result in a significant adverse effect on the aesthetic and perceptual characteristics of the landscape within the Chilterns AONB.

We would like to draw the Examining Authorities attention to the London Thames Crossing NSIP where a series of projects has been identified for potential delivery in consideration of the LURA duty as part of a proactive process to explore issues around mitigation, compensation and enhancement. This case provides an example of how obligations under the LURA duty have been

approached on another NSIP case in the period where further government guidance is awaited on the operation of the duty.

We trust that this response is helpful.

Yours sincerely

John Torlesse
Deputy Director, West Anglia Area Team