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Paul Donovan  
Department of Growth and Environment  
Hertfordshire County Council  
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Six Hills Way  
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11<sup>th</sup> October 2024

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”).**

**CONSULTATION SEEKING INFORMATION FROM THE APPLICANT, THE CHILTERN  
CONSERVATION BOARD, HERTFORDSHIRE COUNTY COUNCIL, NATURAL ENGLAND  
AND ALL INTERESTED PARTIES**

**REQUEST FOR INFORMATION**

1. In response to the Request for Information dated 27<sup>th</sup> September 2024:
  - **‘Side Agreements’** is on behalf of Hertfordshire County Council.
  - **‘R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others [2024] UKSC 20 (“the Finch judgment”)**’ is on behalf of Dacorum Borough Council, Hertfordshire County Council and North Hertfordshire District Council [the Hertfordshire Host Authorities (HHAs)].
  - **‘Swanwick Airspace Improvement Programme – Airspace Deployment 6 (Airspace change ID: ACP-2018-65)’** is on behalf of the HHAs.
  - **‘Amendment of section 85 of the Countryside and Rights of Way Act 2000’** is on behalf of the HHAs.

**Side Agreements**

2. The County Council, together with North Hertfordshire District Council (within whose administrative areas the monitoring the subject of the Agreement would occur), have been engaging with the Applicant, the terms of the Agreement have been agreed and the Applicant and the County Council should be able to complete during October.

**R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others [2024] UKSC 20 (“the Finch judgment”)**

3. The HHA's position on the implications of the Proposed Development on greenhouse gas emissions are set out in a range of their submissions to the Examination, as summarised in their Principal Areas of Disagreement Summary Statement [PADSS (REP8-056)]. Those implications feature amongst those in their Closing Position Statement (REP11-063) as reasons why the Secretary of State (SoS) should refuse the application.

4. The extent to which the additional environmental information provided by the Applicant satisfies the potential implications of the Finch decision in respect of this Proposed Development is a matter for the SoS, as advised by technical specialists and Government Legal Department.

5. The need for the Proposed Development to account for greenhouse gas emissions from inbound flights is an issue identified within various of the HHAs submissions to the Examination and features in their PADSS (REP8-056) and Closing Position Statement (REP11-063). The provision of this additional environmental information is welcomed.

6. The scale of the assessed additional tCO<sub>2</sub>e provided by the Applicant is as follows:

- i. additional Whole Life 21,859,936 tCO<sub>2</sub>e to account for inbound flights;
- ii. additional Whole Life 4,551,645 tCO<sub>2</sub>e (20.8% increase) to account for WTT outbound flights;
- iii. additional Whole Life 4,551,645 tCO<sub>2</sub>e (20.8% increase) to account for WTT inbound flights;
- iv. additional Whole Life 140,240 (15.9% increase) to account for WTT construction emissions.
- v. additional Whole Life 15,372 tCO<sub>2</sub>e (10.7% increase) to account for WTT airport operations.
- vi. additional 736,905 (22.2% increase) to account for WTT surface access.
- vii. totalling an additional (minus inbound flights) Whole Life 5,444,162 tCO<sub>2</sub>e (21% increase) to account for WTT of the emissions reported in the Environmental Statement (ii., iv., v., vi.).
- viii. raising total Whole Life tCO<sub>2</sub>e from 26,197,111 to 58,052,855 – an increase of 31,855,743 tCO<sub>2</sub>e (122% increase).

7. The HHAs appreciate the difficulties ('it is not possible') presented by the Applicant in attempting to assess emissions arising from additional employment and Gross Domestic Product (GDP)/Indirect and induced economic effects or those that may be generated from the wider economic effects of the Proposed Development. Nevertheless, the application contains a considerable amount of information and analysis in relation to the employment/GDP/GVA impacts of the Proposed Development – direct, indirect and induced – and it would perhaps be helpful for the SoS to understand more fully why it would not be appropriate/possible/practicable to undertake an albeit high level assessment of emissions by unit of employment/GDP/GVA, whether or not that assessment would be required to be Finch-compliant. The ONS UK Environmental Accounts, for example, reports on Co<sub>2</sub>e emissions per £million of GVA [both the 2023 and 2024 (reporting for years 2021 and 2022 respectively) accounts finding that the UK emitted 0.19 thousand tonnes of CO<sub>2</sub>e

per £million of gross value added (GVA)]. If it were possible to make an indicative, caveated as necessary, assessment of emissions from indirect/induced economic effects, this might assist the SoS in coming to a rounded view on the overall GHG emission implications of the Proposed Development and usefully inform her decision.

8. The Applicant advises that it is not appropriate *'to include inbound emissions when applying the ANPS test because the test is directly linked to the impact on carbon budgets, and the methodology in relation to flights which is embedded within them'*. This may well be true, but nevertheless the emissions will be real and are a consequence of this Proposed Development. With regard to WTT emissions, the Applicant confirms that these additional emissions do not change the overall assessment of the Environmental Statement that the proposed development 'Minor Adverse, Not Significant'. Again, this conclusion is a methodological one with adverse/beneficial and significance assessed against trajectories to Jet Zero Strategy High Ambition scenario; CCC Planning Assumption for aviation; 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> national carbon budget. Again, the emissions will be real and are a consequence of this Proposed Development. Whilst it may well be possible and indeed appropriate for the emissions directly associated with this Proposed Development to be almost methodologically dismissed in terms of their significance, they are very substantial and their sheer scale needs to be fully accounted for in the decision-making process. The HHA would advise that considerable weight be attached.

## **Other Matters**

### ***Swanwick Airspace Improvement Programme – Airspace Deployment 6 (Airspace change ID: ACP-2018-65)***

9. The SoS has been made aware of concerns raised to the Civil Aviation Authority (CAA) by a range of parties through the CAP1616 Stage 7 Post Implementation Review (PIR) of Airspace Deployment 6 (AD6 - Airspace change ID: ACP-2018-65). Many of those parties advise a decision on the Proposed Development should not be made until such time as the airspace change process has run its course and object to it and call for it to be refused because of the potential adverse impact that would arise were consent to be granted with AD6 procedures in place.

10. Through the PIR process the CAA may confirm the airspace change or require modifications to be implemented and operated. The CAA can approve the modifications if they do better, but if they do not it can conclude that the original design was satisfactory and confirm it or that the original design was not satisfactory and a fresh airspace change needs to be commenced. Alternatively, the CAA may determine that the implemented design does not satisfactorily achieve the objective and terms of its approval, that modifications are not practicable and require the change sponsor to revert to the previous airspace design. These are matters for the airspace change regulatory process to determine.

11. Section 12.7 of REP9-017 rehearses the sensitivity test undertaken by the Applicant in relation to potential changes to airspace and at paragraphs 12.7.1-12.7.5 states:

*'12.7.1 A sensitivity test of potential changes to airspace has been undertaken. Changes being made to arrival routes to the airport, through an airspace change known as AD6 were completed on 8 March 2022 and do not affect noise contour areas; however, there may be changes to departure paths in the future that may affect the shape of noise contours.'*

*12.7.2 As the airspace design is in the initial option appraisal stage, only a series of options for airspace change have been submitted to date. The sensitivity test looks to identify how noise contour areas may be affected if options that may result in a change to contour shape are brought forward. Consequently, the sensitivity test is based on an airspace design option that provides the biggest change to the existing flight paths through provision of respite departure routes.*

*12.7.3 As the airspace change process is still ongoing and will provide an assessment of potential noise impacts as part of the consultation process, a detailed analysis of noise effects has not been undertaken. The sensitivity test aims to demonstrate that airspace changes can be accommodated within the DCO Noise Envelope. Consequently, the assessment only seeks to show how noise contour areas may change as a result of potential changes to departure paths at the noise contour noise limit level of 54dB LAeq, 16h and 48dB LAeq, 8h defined in the Green Controlled Growth Explanatory Note [TR020001/APP/7.07].*

*12.7.4 As the DS 2043 scenario represents a worst-case in terms of noise impacts, it has been used to assess potential changes to airspace. The results of noise predictions of airspace changes showing the change in contour area in the DS 2043 scenario due to potential air space changes are presented in Table 12.40.*

*12.7.5 The sensitivity test of potential changes to airspace indicates that there is a reduction in 54dB LAeq, 16h and 48dB LAeq, 8h noise contour areas. The result of the sensitivity test provides confidence that airspace changes can be accommodated within the DCO Noise Envelope.'*

12. The AD6 airspace change process was not subject to a sensitivity test through the Environmental Statement process for this Proposed Development because:

- i. the airspace change was 'completed on 8 March 2022'; and
- ii. it does 'not affect noise contour areas'.

13. The Examining Authority has reported and made its recommendations based on 12. i. and ii. With regard to i. the AD6 airspace change was not 'completed' on 8<sup>th</sup> March 2022 – it was implemented and subject to the forthcoming CAP1616 PIR process and that process has a range of potential outcomes. With regard to ii. paragraphs 12.7.1-5 state that the sensitivity test undertaken relates to potential change to future departure paths only, and within these those which are likely to change contour shape – these being through provision of respite departure routes.

14. One assumes the conclusion that airspace change AD6 does ‘*not affect noise contour areas*’ was reached on the basis the AC was implemented and operational as anticipated within the CAP2288 Regulatory Decision (24<sup>th</sup> November 2021) and not subject to change following a Stage 7 PIR process.

15. The HHAs acknowledge that, just as is the case with the wider airspace change underway (London Luton Airport Departures and Arrivals, ACP-2018-70), the decision on the Proposed Development cannot wait for the AD6 airspace change process to run its course. They anticipate the Applicant will be rehearsing its position on the concerns raised by parties in relation to AD6 and their views on how this should impact upon this process and would expect it to do so within the context, particularly, of REP9-017 paragraphs 12.7.1-12.7.5 – whether these paragraphs accurately reflect the circumstances of the AD6 proposal and process and if not (paragraphs 12-14), what additional advice/evidence may be required.

### **Amendment of section 85 of the Countryside and Rights of Way Act 2000**

16. The HHAs position on the implications of the Proposed Development on the Chilterns Area of Outstanding Natural Beauty (AONB)/National Landscape (NL) are set out in a range of their submissions to the Examination and summarised in their PADSS (REP8-056). Those implications feature amongst those in their Closing Position Statement (REP11-063) as reasons why the SoS should refuse the application.

17. The HHAs are members of the Chilterns Conservation Board (CCB). They have been carefully monitoring the exchanges between the Department for Transport (DfT), CCB, Natural England (NE) and the Applicant in relation to managing the requirements of section 85 of the Countryside and Rights of Way Act 2000. Whilst the matter is predominantly an issue for those parties, together with the SoS, the HHA’s have the following observations.

#### *National Highways application - A122 Lower Thames Crossing Nationally Significant Infrastructure Project (Reference Number TR010032)*

18. How to satisfy the requirements of s85 is currently being considered in the decision phase of the National Highways (NH) A122 Lower Thames Crossing Nationally Significant Infrastructure Project (NSIP - Reference Number TR010032). Parties in that process – DfT, NH, NE and Kent Downs National Landscape Team (KDNL) – are exploring the scope for measures to compensate for the impact of the proposal on the Kent Down National Landscape (KDNL). There is currently no agreement between the parties on the scale of financial commitment that should be provided by the Applicant (the KDNL seeking £38 million and Applicant offering £3 million) or the wording of a suitable requirement to be incorporated into any DCO.

19. The DfT 26<sup>th</sup> July 2024 consultation letter can be accessed here:

[TR010032-006440-SoS Consultation 6 Letter.pdf \(planninginspectorate.gov.uk\)](#)

20. The NE response dated 7<sup>th</sup> August 2024 can be accessed here:

[TR010032-006479-483795 - LTC - NE Response to SoS letter dated 26.07.2024 on landscape duty.pdf \(planninginspectorate.gov.uk\)](#)

21. The KDMLT response dated 7<sup>th</sup> August 2024 can be accessed here:

[TR010032-006482-Kent Downs response to Sos Letter 26 July 2024 final .pdf \(planninginspectorate.gov.uk\)](#)

22. The NH response dated 7<sup>th</sup> August 2024 can be accessed here:

[TR010032-006481-11.8 Applicant's Response to Secretary of State letter dated 26 July 2024.pdf \(planninginspectorate.gov.uk\)](#)

*National Grid Electricity Transmission plc Application for Development Consent for the Bramford to Twinstead Reinforcement Project (Reference Number EN020002)*

23. The HHAs are aware of the National Grid Electricity Transmission plc Proposed Development for the reinforcement of the electricity transmission network between the existing Bramford Substation in Suffolk, and Twinstead Tee in Essex, for which there was an Examination between 12<sup>th</sup> September 2023 and 12<sup>th</sup> March 2024.

24. The Examining Authority (ExA) reported to the SoS on 12<sup>th</sup> June 2024.

[EN020002-001913-BTTR - ExA Recommendation Report.pdf \(planninginspectorate.gov.uk\)](#)

25. The SoS issued consent on 12<sup>th</sup> September 2024.

[EN020002-001919-Bramford to Twinstead - Final Decision Letter.pdf \(planninginspectorate.gov.uk\)](#)

26. This process has considered how the s85 duty should be applied in relation to the Dedham Vale AONB/NL. Various parties have taken the view that measures to further the statutory purpose could include a fund to compensate for residual adverse impacts, secured by way of legal agreement. Whilst acknowledging that such an agreement would be possible, the Applicant did not consider that to be appropriate, proportionate or necessary.

27. The ExA was content that the Applicant had had proper regard to its statutory duties under s85 of the Countryside and Rights of Way Act, and that its approach, including the identification of opportunities to enhance the designated landscape through the removal of redundant infrastructure, is also broadly compliant with the new duty under the Levelling-up and Regeneration Act. The ExA also ascribed little negative weight to landscape impacts in the planning balance. The SoS has agreed with the ExA in coming to the decision.

*Chilterns National Landscape – recent compensation precedents*

28. There are a number of recent precedents for securing compensation for the adverse impacts of nationally significant development on the Chilterns NL.

- the Chilterns AONB HS2 Review Group was established with a ‘£3m budget to support identification and delivery of local measures over and above that proposed in the Environmental Statement or related detailed design. This could include works outside the limits of the HS2 Hybrid Bill’.

[The Chilterns AONB Review Group | Chilterns National Landscape | Chilterns National Landscape](#)

- the ‘Mend the Gap’ initiative seeks to enhance the areas of the Chilterns and North Wessex Downs National Landscapes that have been negatively impacted by the electrification of the Great Western Railway mainline. Funded by Network Rail (£3 million has been allocated to enhancement projects and £750,000 to mitigation projects), the vision of the Mend the Gap programme is that:

*“The outstanding landscape that links the Chilterns and the North Wessex Downs will be enhanced and enriched for wildlife, residents and visitors, helping to heal and soften the scars left by electrification of the Great Western main line.”*

*London Luton Airport DCO*

29. The consultation letter of 27<sup>th</sup> September 2024 requests ‘*Natural England, the Chilterns Conservation Board and the Applicant to set out what, if any, further enhancement measures they agree could be brought forward, should it be decided further measures are necessary to assure compliance with the amended duty*’. Whilst the consultation letter refers to ‘**further** enhancement measures’ (emphasis added), the HHAs are not clear what existing enhancement measures may have been agreed between the parties, to which they are now exploring the potential to expand.

30. With regard to whether the SoS decision on Bramford to Twinstead Reinforcement Project sets a precedent for this Proposed Development, the HHAs would contend that the ExA conclusions and recommendations and the SoS’s decision are reflective of the particular circumstances of that specific case. In that case the Environmental Statement found that during construction, without mitigation (which the Applicant considered as not possible) there would be major temporary adverse impact on the Dedham Vale AONB/NL, but during operation there would be no significant adverse effects - in fact there would be significant long term beneficial effects on Dedham Vale AONB/NL by virtue of the removal of redundant infrastructure. Indeed, the landscape/visual impacts of the development were judged by both the ExA and SoS as having limited negative weight in weighing up the overall planning balance. Those circumstances are substantively different from those before the SoS in relation to this Proposed Development.

31. If the SoS were to take the view that in the circumstances of this Proposed Development there is a case for a compensatory arrangement in relation to the Chilterns NL to satisfy s85 duties, in terms of options available there appear to be similarities in circumstances between this Proposed Development and Lower Thames

Crossing NSIP and circumstances not dissimilar to HS2 and the electrification of the Great Western Railway mainline.

32. The HHAs note Policy DP14 of the Chilterns Area of Outstanding Natural Beauty Management Plan 2019-2024 (CMP) and its supporting text:

*'DP14 Avoid new or upgraded infrastructure (roads, railways, airports, pylons, masts etc.) which harm the AONB landscape, nature, air quality, tranquillity or the visitor experience. Fully assess impacts on the AONB, including increased recreation pressure, traffic, overflying and severance of ecological connectivity in the AONB. Avoid, mitigate and compensate to achieve a **net gain** for the AONB. [emphasis added]*

*..... However, other pressures continue, like airport expansion at Heathrow and Luton which could result in more aircraft over-flying the AONB and harm its tranquillity. The effects on the Chilterns AONB must be assessed in full and cumulatively with other projects early in the decision-making process. Harm to nationally designated landscapes is not something that can be offset, it is not possible to create a landscape of this unique natural beauty elsewhere as a substitute. The mitigation hierarchy in environmental policy and best practice prioritises 1) the avoidance of harm; before 2) identifying all possible mitigation; and only then deals with 3) compensatory measures in relation to residual impacts. Compensation is a last resort. **Large national projects like HS2 are triggering a requirement for major investment in landscape to compensate (in some way) for harm.** [emphasis added]*

33. The HHAs would expect any compensatory mechanism to seek to satisfy DP14 - to establish what major investment in landscape is required to compensate for harm and how that might achieve a net gain for the Chilterns NL, reflecting the vision, objectives and policies within the CMP. These are matters for the parties, but the HHAs would offer the following observations:

- it does not appear to be appropriate to attempt to identify specific measures in the form of projects/schemes (if indeed that is possible) at this late stage in the process.
- the DCO should provide an appropriate mechanism to seek to satisfy s85 duty responsibilities that can be taken forward post-Consent.
- the scale of the measures (which given experience elsewhere is assumed to predominantly involve a financial commitment from the Applicant) to be encompassed by any mechanism need to reflect the nature, scale and longevity of the impacts.
- the adverse impacts on the Chilterns NL are, for all intents and purposes, 'forever impacts' - they will persist for generations. It would appear appropriate for the mechanism/measures to reflect that longevity and potentially exist in perpetuity. In that context a rolling annual financial commitment from the Applicant might be more appropriate than a one-off arrangement. The draft DCO has a precedent for perpetuity/rolling annual commitment in relation to the Sustainable Transport Fund (REP10-039).
- whilst it may well be that measures could be deployed for the benefit of the NL as a whole and not spatially restricted, the HHAs would anticipate that priority



might be afforded in some way to areas of the NL in closer proximity to the Proposed Development – for example, within a certain specified radius. The draft DCO has a precedent for setting spatial applicability in the form of the extent of eligibility for Community First (REP10-029).

- the mechanism for management of any financial contribution – would this be solely the responsibility of CCB or in combination with the Applicant, or perhaps managed by a new oversight group – as it the case with the Steering Group of the Airport Transport Forum in the case of the Sustainable Transport Fund (REP10-039).
- any mechanism/measures deployment should be operated at no net cost to parties with implementation responsibilities (for example, the CCB).

Yours sincerely,

Paul Donovan  
Department of Growth and Infrastructure