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My Ref.: F:\Planning\DM\Luton Airport NSIP/DCO

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1st November 2024

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 CHILTERNNS CONSERVATION BOARD, HERTFORDSHIRE COUNTY COUNCIL, NATURAL ENGLAND AND ALL INTERESTED PARTIES (dated 27 September 2024).

1. **Response by the Chilterns Conservation Board (CCB)**, constituted as the Conservation Board for the Chilterns Area of Outstanding Natural Beauty (AONB) under s.87 of the Countryside and Rights of Way Act 2000 (the CROW Act).

2. This response relates to item 1 in the above request for information, which stated:

“Without prejudice to the final decision and subject to the above, Natural England, the Chilterns Conservation Board and the Applicant are invited 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.

“If agreement cannot be reached, the Applicant, Natural England and the Chilterns Conservation Board are invited to set out their respective views on what is needed to resolve the concerns.”

Summary

- **Agreement has not been reached, despite positive effort, due to the parties differing significantly on (a) the quantum of funding necessary to support the enhancement measures, and (b) the purpose of achieving agreement in terms of the meaning of compliance with the amended s.85 duty within the CROW Act.**
- **This submission therefore sets out CCB’s current position on the proposal and provides CCB’s views on what is needed to resolve our concerns, in terms of:**
- **How compliance with the duty may be demonstrated.**
- **How the nature and quantum of the enhancement measures may be determined.**

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3. This response is submitted in the context of the CCB and the Applicant being unable to reach a satisfactory agreement concerning the provision of further enhancement measures. The unresolved issues relate mostly to:
 - a) the gap between the parties' positions on the quantum of funding required for the enhancement measures, and
 - b) the purpose of reaching such an agreement, with the Applicant seeking an outcome which provided them with assurance on compliance with the duty under s.85 of the Countryside and Rights of Way Act 2000, as amended.
4. Agreement on other matters of detail could only have been reached satisfactorily had agreement been reached on these two key points.
5. In reaching this position, CCB has participated in the following actions, in addition to frequent exchanges of correspondence with the relevant parties.
 - 8 Oct: meeting between CCB and Natural England (NE).
 - 10 Oct: first meeting between the Applicant and CCB.
 - 17 Oct: internal discussion of issues at CCB Planning Committee.
 - 22 Oct: Applicant circulated draft 'heads of terms' for consideration.
 - 22 Oct: internal discussion of issues with CCB Senior Management Team.
 - 24 Oct: second meeting between Applicant and CCB.
 - 24 Oct: internal meeting with CCB legal advisers.
 - 29 Oct: further internal discussion with CCB Senior Management Team.
 - 31 Oct: third meeting between Applicant and CCB.
 - 31 Oct: final sign-off of CCB submission with CCB CEO, Chair and Deputy Chair.
6. This information is offered to demonstrate the level of attention paid in seeking to resolve the matter.
7. The CCB is grateful to the Applicant for the positive and constructive spirit in which they engaged with the issue, and also for helping to guide CCB officers through some of the relevant processes and considerations with which CCB had less direct experience.
8. We are also grateful to the Secretary of State (SoS) for extending the original deadline for submission of a potential agreement from 13 October to 1 November.
9. Note that it was agreed between the parties at an early stage that any agreement reached would be between the Applicant and CCB, rather than including Natural England (NE), as had been envisaged in the SoS's consultation letter. Natural England had stated to both the Applicant and CCB that their position would be to defer to the CCB on matters of detail, and seeking a bipartite agreement would be more pragmatic and expedient. Nonetheless, CCB has continued to seek advice from NE where appropriate.
10. While the parties have not been able to reach a clear agreement on this matter, the exchange of information and views has been beneficial, we believe, to both parties, in terms of improving understanding of each other's positions and the constraints each operates under.
11. A key real issue has been that the timescales for reaching a clear agreement proved too optimistic, given the complexity of the issues involved. However, both parties agreed that



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it would not be desirable to ask the SoS for significant additional time, which might lead to further delay in the decision-making process.

12. The parties have therefore agreed to follow the route presented in the second part of the SoS's request: "to set out their respective views on what is needed to resolve the concerns."
13. This response has been discussed and approved by the Chair of the Board, the Deputy Chair and our CEO under the Board's urgency procedures.

The Chilterns Conservation Board's position

14. The CCB's position remains that the proposed DCO harms the tranquillity of the Chilterns National Landscape (formerly AONB), in both visual and aural terms, and hence the perception and appreciation of its landscape value. The Applicant acknowledges this harm, notably in:
 - Environmental Statement, chapter 14 (14.9.20 in Document 5.01, Ch 14 Landscape & Visual, accepted at the discretion of the Examining Authority 13th July 2023 and document reference TR020001/APP/5.01), noting that the impacts would "permanently deteriorate the sense of tranquillity perceived by those recreating within the AONB", and
 - The Applicant's closing statement, which accepts that '...the Proposed Development does not strictly protect or enhance the AONB' (paragraph 9.10.27 of their closing submission 8.191 Closing Submission by London Luton Airport Limited, 9th February 2024 and document reference TR020001/APP/8.191).
15. In its 'registration comments' submitted on 23 June 2023, the CCB summarised its position on the principle of the DCO proposal in these terms: "while recognising that it remains national policy for aviation to expand, even in a climate emergency and biodiversity crisis, CCB considers that any decision for the general expansion of aviation to take place in the vicinity of the Chilterns AONB ... needs very careful justification and attention to detail in terms of mitigating, reducing, or preferably avoiding its obvious significant harmful impacts".
16. Following CCB's involvement in the examination, and subsequent to the amendment of the "duty of regard" in s.85 of the Countryside and Rights of Way Act 2000 through the Levelling-Up and Regeneration Act 2023 to a strengthened "duty to further the purpose of conserving and enhancing the natural beauty of the area", the CCB would now consider that the focus should be on avoiding harmful impacts in the first place, and would now seek the rejection of this proposal. Further justification for this position will be given below in relation to the reasons why an agreement could not be reached with the Applicant, despite the constructive approach taken by both parties. As noted above, these reasons related to the purpose of the agreement, and the quantum of funding for enhancement measures.

Purpose of the agreement – demonstrating compliance.

17. As requested by the SoS, the parties were asked "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". The issue here is that the



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consideration of enhancement measures, on their own, could not be considered to assure compliance with the duty.

18. That Parliament saw fit through the 2023 Act to strengthen the s.85 “duty of regard” to a duty to “seek to further the purpose of conserving and enhancing the natural beauty of the area” clearly indicates the need for a step-change in how the duty had previously been observed. The Act allows for secondary legislation to provide further clarity on how the duty was to be observed, and “interim guidance” was anticipated to be provided. It is a matter of deep concern to those working to conserve and enhance protected landscapes that this guidance has not yet been provided, and this is also frustrating for those interacting with protected landscapes.
19. Nonetheless, Natural England (NE) do provide advice on their interpretation of the duty insofar as it relates to the consideration of development proposals. Their advice has been provided to the Examination in submissions made on [6 September 2024](#) and previously on [29 January 2024](#). Protected landscape teams also refer to an opinion provided by Landmark Chambers to the Campaign for National Parks from January 2024, which provides more detail (some of which is specific to National Parks) but which broadly supports the position taken by NE (if that opinion is not referred to in the examination library, it is in the public domain through the examination on the A66 Northern Trans-Pennine Project, TR010062, [here](#)).
20. For ease of reference, we reproduce the relevant extract from NE’s submission of January 2024 here:

The new duty will apply to the examining authority’s recommendation and Secretary of State decision. We understand that the government (Defra) expect to issue guidance in support of the new duty soon. In the meantime, and without prejudicing that guidance, Natural England advises 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 (in this case The Chilterns Conservation Board) should be consulted.*





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21. Demonstrating that the duty has been applied in an “active” way and taking “all reasonable steps to explore how the statutory purposes ... can be furthered” cannot be achieved simply in terms of identifying some enhancement measures. Demonstrating compliance with the duty will in our view involve “reasoned evidence” of the consideration of:

- Avoiding harm (for example by considering alternatives to meeting the development need, either in the proposed location or in principle);
- Reducing/mitigating harm (seeking to moderate impacts);
- Where harm is clearly demonstrated to be unavoidable, in terms of consideration of the previous two points, compensating for harm (in terms of “like for like measures and replacement”); and then
- Going “beyond” this to provide measures that “further the statutory purposes” of the protected landscape, helping to deliver the statutory Management Plan.

22. CCB’s position is that the matter of compensation (or enhancement measures) in relation to the harmful impacts acknowledged to be caused to the special qualities of the Chilterns National Landscape, should the application be granted, should have been built into the proposal from the start, simply as a response to the general principles of the ‘mitigation hierarchy’. The application of the duty of regard under s.85 of the Countryside and Rights of Way Act 2000 (as it stood when the application was submitted), should have been taken to underline such an approach, and the more proactive requirements of the strengthened duty to “seek to further the purpose of conserving and enhancing the natural beauty of the area”, which came into effect during the examination, should, in the view of CCB and NE, further reinforced the point. We shall return to the application of the duty later.

23. The CCB can not provide assurances on whether the duty will have been complied with on the basis of proposed enhancement measures alone, without sight of the full reasoned justification for any decision to grant the DCO.

24. Further to this, the CCB notes that there is a complex (and largely untested) relationship between the duty (which applies to all relevant authorities in the exercise of their functions, and not just to planning activities) and the application of local and national planning (and other relevant) policies. A decision on a planning proposal may comply with the duty, but still be unacceptable in terms of planning policy, and *vice versa*.

25. In CCB’s view the current proposal does not comply with planning policy or legislation in that it does not conserve and enhance the natural beauty of the Chilterns National Landscape (as acknowledged by the applicant in their closing statement), including para 5.222 of the Airports National Policy Statement (proposals should “aim to avoid compromising the purposes of designation, and such projects should be designed sensitively given the various siting, operational, and other relevant constraints”). It should be noted that the Airports NPS has not been updated to reflect the insertion into the NPPF of the policy on development in the setting of a protected landscape (“development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas”), nor, obviously, the strengthened s.85 duty.

26. As a result, the Luton Airport DCO can only be approved as an exception to planning policy, i.e. as being necessary and unavoidable development in the national interest, and



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any further enhancement measures, which should clearly be seen as an option of last resort having ruled out any other possible outcome, would reflect that.

27. CCB notes, and agrees with the applicant, their position as stated in their submission of [19 August 2024](#) that the s.85 duty does not apply to the applicant themselves. This is recognised to be an important consideration, and there is therefore no *requirement* that the applicant should themselves consider the steps set out in para 20 above in relation to the duty, especially the potential for alternative locations to meet the development need.
28. However, the duty does apply to a number of other relevant authorities, in addition to – as has been noted by others including Natural England – the Examining Authority in reporting to the Secretary of State, and to the SoS herself in making the decision. Such relevant authorities include Luton Borough Council, the Civil Aviation Authority and, if they are classed as a statutory undertaker, NATS.
29. The s.85 duty, and additional duties, also apply to the Chilterns Conservation Board, and it is incumbent on the CCB to be able to demonstrate that it has met its primary duty in this regard, which is also to seek to further the purpose of conserving and enhancing the natural beauty of the area in the exercise of its functions. The CCB considers that it has fulfilled this duty by seeking first to avoid harm to the natural beauty of the area. If this harm cannot be avoided, then it continues to be CCB’s duty to seek further measures that may conserve and enhance the natural beauty of the area.

The outcome of any agreement – the nature and scale of enhancement measures

30. In the context of the above, CCB entered into discussions with the Applicant following the SoS’s request to attempt to reach agreement on the nature of “further enhancement measures” that could be provided, as a last resort, in relation to the development proposal, should the DCO application be granted. As noted above, agreement on this could not be reached.
31. Part of the reason for not reaching agreement is, in CCB’s view, a result of the lack of time and resources available at this stage in the DCO process to determine an appropriate and robust outcome. Neither party would be keen to see the decision on the application put back further.
32. CCB understands that the Applicant will present their approach to determining this outcome, based on suggestions made in our meetings with them. CCB has also considered an approach that could be taken, and outlined that to the applicant, but has not had the resources or capacity to arrive at the level of detail either party consider necessary to arrive at a robust outcome. The broad outline of this approach is presented here for information, as follows.
33. The starting point for the CCB is the recognition by the Applicant in their Environment Statement that by phase 2b of the proposal’s implementation, the impacts of increased overflying would result in **impacts that would “permanently deteriorate the sense of tranquillity perceived by those recreating within the AONB”**. In the spirit of NE’s advice on the interpretation of the s.85 duty, the enhancement measures arising from the proposal must go beyond “like-for-like measures” and *further* the statutory purposes of the protected landscape – in effect, these should aim to provide a “net gain”.



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34. In discussions with the applicant, and with NE, a number of potential comparator schemes have been suggested as a source for how the further enhancement measures for the Luton Airport DCO might be formulated. Key among these are:
- [HS2's Additional Projects Fund](#) in the Chilterns National Landscape.
 - The Great Western Railway electrification programme, which led to the "[Mend the Gap](#)" fund (Chilterns and North Wessex Downs National Landscapes).
 - The East Thames Crossing (impacting the Kent Downs National Landscape).
 - National Grid Bramford to Twinstead power lines/undergrounding scheme (Dedham Vale National Landscape)
35. Both HS2 and the East Thames Crossing involved significant direct physical harm to the landscapes in question, resulting in significant mitigation/restoration measures within the projects themselves, as well as the potential for "further enhancement". HS2 was arrived at through a hybrid bill and prior to the strengthening of the s.85 duty, while the East Thames Crossing is a live DCO application, without a conclusion as to the relevant enhancement measures. The National Grid scheme also involves a complex relationship between new and replacement infrastructure, with a significant amount of mitigation activity, including the undergrounding of power lines. In CCB's view, none of these projects are ideal comparators, because the impacts are completely different from those of the Luton Airport proposal.
36. CCB considers that the closest comparator is the GWR "Mend The Gap" scheme, for the following reasons:
- The impacts are experiential: they affect how people recreating in the National Landscape can appreciate its natural beauty and tranquillity in terms of the senses, rather than direct physical harm to the landscape features. There is a relatively minor difference in that the impacts of the GWR electrification that led to the scheme only relate to the visual appearance of the gantries and other overhead line equipment, whereas the Luton Airport DCO's impacts involve the visual and aural impacts of overflying aircraft.
 - Both cases start from an existing baseline of impacts on the landscape: for the GWR this was the existing railway infrastructure and the movement of trains, and for Luton Airport this is the existing level of overflying.
 - Both cases impact belts of land that are broadly linear in nature.
37. The fund that arose from the GWR scheme was for £3.75 million, split as £3 million for enhancement projects, and £750,000 for mitigation projects.
38. CCB's suggestion is that an appropriate quantum for a fund could be calculated by comparing the size of the area in which the impacts of the GWR electrification were deemed to be experienced in both the Chilterns and North Wessex Downs National Landscapes with the size of the area in which the impacts of the overflying as a result of Luton Airport's expansion (i.e. at Phase 2b) would be experienced, and applying that ratio to the size of the fund for "Mend The Gap".
39. There may be room for negotiation on details of how this approach could be applied.



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40. CCB's suggestions for criteria for managing the fund would be as follows:

- a. The nature of fundable projects could be on the basis of grants given on application to individual projects (similar to Mend The Gap or the Government's Farming in Protected Landscapes (FiPL)), or to larger scale partnership projects, as part of match-funding with other sources, such as NLHF, or a combination of these.
- b. Projects should be focused in the area within the Chilterns National Landscape in which the visual and aural impacts would be felt. The Applicant has indicated that they would welcome projects in proximity to Luton, and CCB would consider *extending* the area in which projects could be focused to encompass more land (in the Chilterns AONB) – such an extension would not affect the area used to calculate the size of the fund. Consideration might also be given to larger scale projects that overlap with this area.
- c. Selected projects should align with the vision and objectives of the extant statutory Management Plan for the Chilterns National Landscape, and be consistent with local and national planning policies and other strategies such as Local Nature Recovery Strategies.
- d. The Applicant should be invited to participate in a steering group for the fund, with other relevant stakeholders, but should not have a veto over project selection.
- e. There should be no net cost to the CCB in the administration of the fund.



41. On point (e), all parties appear so far to have assumed that the fund would be administered by the CCB. The CCB would like to emphasise that in our view this is the most appropriate option, since CCB is best placed to be able to co-ordinate the funding of projects across administrative boundaries (the project area is likely to extend across several local authorities including Luton, Central Beds, Buckinghamshire, and several local authorities in Hertfordshire), and to have optimal knowledge of the statutory Management Plan for the Chilterns AONB and other relevant plans and strategies across the region, as well as established relationships with relevant delivery partners.

42. Examples of emerging larger scale partnership projects referred to in (a) above that could inform the nature of the enhancement measures programme include:

- The [Chalkscapes](#) Landscape Partnership, which “aims to deliver landscape-scale conservation and community engagement, giving urgent support to the wildlife, heritage and communities which face unprecedented and relentless levels of housing, infrastructure growth and environmental pressures”.
- [Nature Calling](#): “a ground-breaking £2m national arts programme, designed to connect and deepen people’s engagement with the landscape”.
- The North Chilterns Partnership: early stages of a programme led by Natural England to develop and shape nature’s recovery across the North Chilterns landscape, connect people with nature, and support delivery of the Chilterns Management Plan, Local Nature Recovery Strategies and other relevant strategic pieces of work.



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- 43. All of the above programmes operate (or will operate) in and around Luton and the North Chilterns area, and CCB are key or lead partners.
- 44. Finally, our Board members have suggested that an alternative to the delivery of enhancement measures through a specific time-limited fund that could be explored might be a longer term annual grant, similar to the existing Community Trust Fund, but managed by the CCB and with a different set of objectives, directed specifically at enhancement projects within the areas of the National Landscape impacted by the airport expansion, and with the size of the annual grant linked to the level of growth of passengers by increased flight movements.



The Chilterns Conservation Board

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