



**Chilterns**  
National  
Landscape

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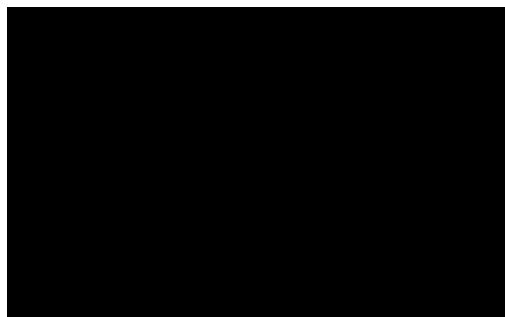
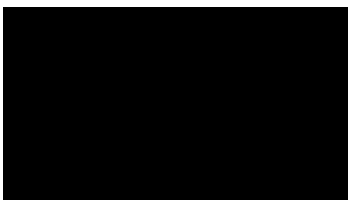
Secretary of State / PINS reference: TRO20001-003654.

21 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 CHILTERNES CONSERVATION BOARD, NATURAL ENGLAND AND ALL INTERESTED PARTIES (dated 11 November 2024).**

1. **Response by the Chilterns Conservation Board (CCB)**, constituted as the Conservation Board for the Chilterns Area of Outstanding Natural Beauty (AONB) under Section 87 of the Countryside and Rights of Way Act 2000.
2. The CCB is grateful for the opportunity to comment on the applicant’s suggested wording for a new article in relation to compliance with the duty under Section 85 of the Countryside and Rights of Way Act 2000 and to provide any other final comments in relation to the responses received to the Secretary of State’s request of 27 September.
3. In this context, the **summary of the CCB’s key areas of concern** is as follows.
4. The nature of the unilateral offer made by the Applicant fundamentally demonstrates a disregard for the scale of harm to the natural beauty of the area, and a lack of understanding of the otherwise positive relationship between the Chilterns National Landscape, the CCB, the airport and the Luton’s communities.
5. In terms of whether inclusion of this wording in the DCO (or a revised wording) would be sufficient to demonstrate compliance with the section 85 duty, the view of the CCB is that – on its own – it would not.
6. The advice of Natural England is clear that compliance with the duty requires the decision-maker to “take all reasonable steps to explore how the statutory purposes of the protected landscape ... can be furthered”, to “demonstrate with reasoned evidence what measures can be taken to further the statutory purpose”. The effect of the proposed article upon the question of whether the duty has been complied with cannot, in CCB’s view, be considered in isolation from how the duty has been complied with in relation to other aspects of the consideration of the proposal.





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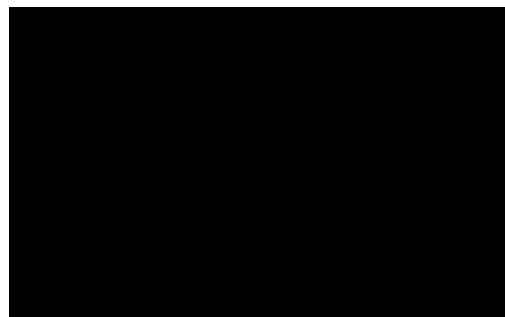
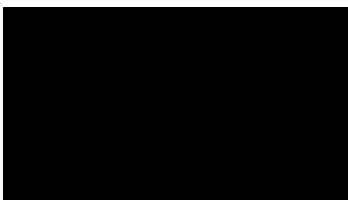
7. If the Secretary of State is satisfied that there is no reasonable alternative to granting consent for the airport's expansion, in terms of how that decision might further the purpose of conserving and enhancing the natural beauty of the Chilterns National Landscape, then the next step is to consider whether the offer made by the Applicants is sufficient to further that same purpose, and whether the offer is "in addition to avoiding and mitigating the effects of the development" and "proportionate to the type and scale of the development and its implications for the area".
8. The view of the Chilterns Conservation Board is that the current proposal does not meet the above considerations. The CCB has previously suggested a potential approach which is considered to be consistent with similar interventions in relation to what the Board considers to be similar impacts on the enjoyment of the natural beauty of the area. This suggestion was made by the CCB in pursuance of their statutory duties as set out above.
9. Before moving on to the proposed wording of the new article, the CCB would like to make observations on the Applicant's response of 8 November in response to the second part of the Secretary of State's request.
10. It would be tempting to work through the Applicant's response on the basis of a line-by-line rebuttal, as indeed the Applicant has done in relation to CCB's response of 1 November. However, this does not seem to be a productive use of anyone's time, and would result in much repetition of points already made in the Examination and in subsequent correspondence. All of that material is already available to the Secretary of State.
11. However, we do consider that it seems necessary to underline some aspects of CCB's role, and to respond to the Applicant's assertions about **the nature of the Section 85 duty**.
12. The CCB exercises its functions in relation to the AONB in the context of the same duty under Section 85 of the Countryside and Rights of Way Act 2000 to "seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty" that applies to Luton Borough Council – the airport's owners – the Examining Authority, and the Secretary of State. In addition, under Section 87, the CCB is obliged to:
  - "seek to further the purpose of increasing the understanding and enjoyment by the public of the special qualities of the area", where this is compatible with the first duty;
  - "seek to foster the economic and social well-being of local communities within the area" in co-operation with local authorities and other relevant bodies;
  - "have due regard to the needs of agriculture and forestry and to the economic and social interests of rural areas"; and
  - "have due regard to the protection against pollution" of surface or underground water.
13. The functions of the CCB, and the satisfaction of its duties, are all undertaken with the aim of delivering the Government's objectives. This relates not only to the conservation and enhancement of the natural beauty of the AONB (this objective having been set originally under the groundbreaking National Parks and Access to the Countryside Act 1949 which celebrates its 75<sup>th</sup> anniversary this year), but also to meeting international



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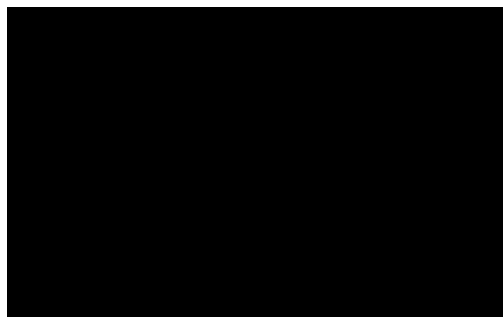
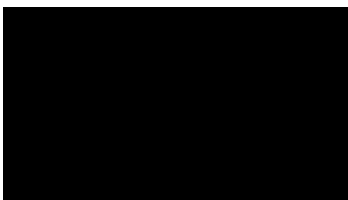




obligations, such as the '30 by 30' commitment to protect and conserve a minimum of 30% of land and sea for biodiversity by 2030.

- 14. In seeking to meet and appropriately balance the satisfaction of its duties, the CCB has engaged constructively and in good faith with both Luton Borough Council and the Applicant in consultations on the development of the proposals. CCB has similarly engaged with the Examining Authority and the Secretary of State during the examination, and since. Our key position, throughout the process, has been that the Applicant, despite recognising that the expansion of the airport would lead to adverse impacts on the natural beauty of the AONB, and that the proposals would not conserve and enhance the natural beauty of the area, has resisted opportunities to seek to redress those harmful impacts or to secure enhancements, until specifically asked to investigate such measures by the Secretary of State.
- 15. The CCB is a small public sector organisation with limited resources and capacity. It has limited experience of dealing with DCO applications and, in contrast with the Applicant, does not have the resources to access multi-disciplinary consultancies or the opinion of King's Counsel.
- 16. The predicament of the Chilterns National Landscape in terms of the development pressures it is subject to was recognised by the [Glover Landscapes Review](#) in 2019, which recommended that the Chilterns should be redesignated as a National Park, and if not, that it should "be given increased resources, and, if other recommendations are accepted in this report, further powers to address the specific challenges that it faces" (p.121).
- 17. The only action so far taken in this regard is the same as has been applied to all protected landscapes, in the strengthening of the duty under section 85 of the CROW Act from the passive duty of regard to an active duty to "seek to further".
- 18. The Applicant places great stock on their interpretation of the strengthened duty, and, particularly in section 4 of their submission of 8 November seeks to dismiss the approach taken by Natural England in their advice on the interpretation of the duty. Natural England's advice is, presumably, derived from advice given to their officials by their parent department, Defra. The latter's long-awaited 'interim guidance' on the interpretation of the duty is expected in 2025. Natural England's advice forms the basis of advice published this month by the National Landscapes Association<sup>1</sup>, also attached with this submission.
- 19. Ultimately, the CCB is, with good faith, seeking alignment with the duty in the terms in which it has been represented to the Board by colleagues at Natural England and Defra, and the issue may only be properly settled through discussions between the Department of Transport and their colleagues at Defra.
- 20. Returning to the Applicant's **proposed wording for the new article in the DCO**, the CCB would offer the following observations.

<sup>1</sup> <https://national-landscapes.org.uk/guidance-for-local-planning-authorities-on-crow-s-85-duty>





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21. As noted above, the CCB’s officers are not sufficiently versed in the legal requirements for the drafting of a DCO to be able to offer a view on whether the proposed wording of the article would be appropriate, robust and/or enforceable for the intended purposes. That would require the assessment of an independent authority, which the CCB does not have the resources to employ. As for all third parties affected by a DCO, the CCB would have to rely on the assessment of the Secretary of State and her advisors in this regard.
22. The CCB is concerned that item (3) of the proposed wording might be interpreted as giving the Applicant (the “undertaker”) a power of veto over the CCB’s allocation of funds to a project, should they dispute whether criteria 2(a) and/or (b) apply (notwithstanding the apparent assurance on this given in their para 2.6).
23. In earlier discussions both parties had agreed to limiting projects to those that would result in enhancements in the area most affected by the development and/or in proximity to Luton itself. Ensuring that Luton Airport’s contributions were recognised in the enhancement projects in an appropriate way was also an area of agreement between the parties. The CCB would be interested in retaining these elements of the original discussions, since they are essential in terms of relating any enhancement projects to the development in question, consistent with normal advice on planning obligations.
24. Contrary to the Applicant’s assertion in their para 2.6, the administration of the fund could not be simply “folded into existing funding streams”, and there would be additional costs. The CCB’s existing funding streams, such as Farming in Protected Landscapes and the Mend the Gap fund, are administered by officers whose time and other resources (including publicity for the funds) are supported by the relevant funding body. In addition, the officers that currently administer those funding streams are mostly employed on fixed-term contracts for the duration of the existence of the fund.
25. The CCB respectfully suggests that it is now up to the Secretaries of State with responsibility for aviation and for the conservation and enhancement of protected landscapes respectively to determine between themselves how to balance these competing priorities in the best long-term interests of the nation and the social, economic and environmental well-being of the area and its communities.
26. Whatever the outcome of these deliberations, the CCB is grateful to the Secretary of State for the careful consideration that she has given to this issue.

