

Date: 25 November 2024
Our ref: 25_11_24 Luton Airport Expansion
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.

Thank you for your letter dated the 11th November 2024

Amendment of section 85 of the Countryside and Rights of Way Act 2000 (“CRoW Act 2000”)

In its letter dated 1 November 2024, the Applicant confirmed that it did not consider that any further measures were necessary to ensure compliance with the amended section 85 of the CRoW Act 2000 for the reasons set out at paragraphs 4.1– 4.20 of its letter dated 19 August 2024 and paragraphs 2.2 – 2.3 of its letter dated 11 October 2024. However, in the Applicant’s letter dated 8 November 2024, they have provided suggested wording for a new article that could be added to the DCO to demonstrate the amended duty set out in section 85 of the CRoW Act 2000 is satisfied should the Secretary of State consider this necessary. While noting the response from the Chilterns Conservation Board dated 1 November 2024 which the Secretary of State will fully consider before making her final decision and without prejudice to the final decision, the Chilterns Conservation Board, Natural England and all Interested Parties are invited to provide comments on the Applicant’s proposed wording and welcomes views on whether this new article would ensure compliance with the CRoW Act 2000. Natural England are also invited to comment on the responses from the Chilterns Conservation Board and the Applicant dated 1 November 2024.

Natural England’s response to the Applicant and the Chilterns Conservation Board’s letters of the 1 November 2024

In the continued absence of further guidance from DEFRA regarding the amendment of s85 of the CRoW Act 2000, Natural England is unable to provide a detailed critique of the letters submitted by

the Chilterns Conservation Board (“CCB”) and the applicant that goes much beyond our relatively high level response of the 11th October 2024.

In relation to the applicants letter and its position that it does not consider that any further measures were necessary to ensure compliance with the amended section 85 of the CRoW Act 2000 we repeat our previous advice. *‘Natural England considers the amended duty to be an active duty and a strengthening of the original ‘duty to have regard’. We consider that it infers a ‘duty to enhance’ and requires measures to be proposed which are in addition to those intended to avoid, mitigate and compensate the effects of the development.’*

Proposed amended wording

The applicant proposed the following wording in their letter of the 8 November 2024:

Enhancement and conservation of the Chilterns National Landscape

54.—(1) Having regard to the duty under section 85 of the Countryside and Rights of Way Act 2000, upon service of the notice referred to in article 44

(1) the undertaker will make a funding contribution to the Chilterns Conservation Board in the sum of £250,000.

(2) The Chilterns Conservation Board must allocate the funding contribution referred to in paragraph (1) to one or more projects which:

(a) further the purposes of conserving or enhancing the Chilterns National Landscape; and

(b) are consistent with the Chilterns AONB Management Plan 2019 – 2024 (or and any superseding equivalent document).

(3) Upon any allocation of funding in accordance with paragraph (2), the Chilterns Conservation Board must notify the undertaker about the project which is in receipt of the funding and provide the undertaker with such information about the project as the undertaker may reasonably request.

(4) In this article the “Chilterns Conservation Board” includes any successor body which performs its functions and duties,

The relevant paragraph of Natural England’s standard advice is as follows:

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.

We have not received legal advice on the proposed wording above but the decision makers should satisfy themselves that any required measures are suitably secured. We note, however, that the applicant and CCB are not at this point in time in agreement over the nature/scale of measures to be provided. It is noted in the applicants justification for the figure that they have arrived at that they point to other projects direct impacts upon National Landscapes. Natural England advises that the duty to further the purposes should be in addition to mitigation of impacts and further notes that the CCB raised strong outstanding concerns relating to the impacts of the scheme on the National Landscape in their letter of the 1 November and throughout the examination.

The fundamental concern with the suggested approach above is that in the absence of agreement with the CCB it is unclear what such funds might be used for or whether they are capable of delivering any meaningful contribution towards furthering the purposes of the national landscape. Natural England notes that the CCB have been invited to submit their own response and advise that appropriate consideration should be given to their representations.

Yours sincerely,

Jamie Melvin
Senior Officer - West Anglia Area Team