

CAA relevant representation to London Gatwick Airport Limited's July 2023 DCO application

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Chapter 1

Introduction and purpose

- 1.1 The Civil Aviation Authority (CAA), in its capacity as a statutory consultee under planning law, welcomes the opportunity to provide a relevant representation to the Planning Inspectorate on Gatwick Airport Limited's (GAL) application for a Development Consent Order (DCO) to allow it to expand its airport operations through the routine use of its existing northern runway.
- 1.2 The CAA has a number of statutory functions which are relevant to any scheme proposing to make best use of an airport's existing runways. We are using our relevant representation to GAL's proposed development ("the Development") to provide clarity and transparency on the roles and responsibilities we are performing and will continue to perform with respect to GAL's proposed expansion scheme.
- 1.3 Parts of GAL's proposals for expansion will be subject to CAA regulatory processes and approval. Some of these regulatory processes are already under way and will continue throughout and beyond the DCO process (including after DCO consent, if granted, and during the construction phase).
- 1.4 We have engaged and will continue to engage with GAL to understand its proposals for expansion insofar as they relate to our relevant regulatory roles and statutory functions and thus in our capacity as a statutory consultee.

The CAA's role as a statutory consultee under planning law

- 1.5 The CAA is prescribed as a statutory consultee in relation to applications for development consent made under the Planning Act 2008 and must be consulted on all such applications relating to an airport or which are likely to affect an airport or its current or future operation. We therefore respond to consultations and information from an applicant insofar as their application is relevant to our regulatory roles and statutory functions and we have comments to make.

Structure of this response

- 1.6 There is evidently a large volume of material submitted to PINS, much of which does not appear to be directly relevant to the CAA's regulatory roles and statutory functions. We have not reviewed all of the application documents published by PINS. We have focussed our attention on those areas which are within or are closely related to the CAA's areas of regulatory responsibility.
- 1.7 In the remainder of this representation, we set out:

- The role of the CAA as it pertains to GAL's DCO application in Chapter 2
- Our engagement to date with GAL on its DCO application in Chapter 3
- The CAA's relevant representations on the GAL proposal in Chapter 4.

Chapter 2

The role of the Civil Aviation Authority with respect to GAL's DCO application

The role of the Civil Aviation Authority

- 2.1 The Civil Aviation Authority (CAA) is a public corporation established by Parliament in 1972 as an independent specialist aviation regulator. As the UK's specialist aviation regulator, the CAA works so that:
- the aviation industry meets the highest safety standards;
 - consumers have choice, value for money, are protected and treated fairly when they fly;
 - through efficient use of airspace, the environmental impact of aviation on local communities is effectively managed and CO2 emissions are reduced; and
 - the aviation industry manages security risks effectively.
- 2.2 The CAA is the decision-making authority in relation to safety and airspace approvals, particularly in relation to any Airspace Change Proposals (ACP), Air Traffic Control approval, Airport Security and the Aerodrome Certification Process:
- Airspace: the CAA considers and decides on airspace change proposals that are submitted to it, taking into account a range of factors set out in s.70 of the Transport Act 2000 including safety, the needs of users of airspace and environmental impacts.
 - Air Traffic Control: Civil Air Traffic Services (ATS) and technical elements of associated services are principally regulated in the UK by the CAA. Regulation is achieved, as appropriate, through the grant of approval to equipment and systems, licensing and certification of personnel and through the auditing and inspection of the subsequent systems and service provision.
 - Aerodrome Certification: the CAA regulates all UK airports to ensure they comply with relevant international and UK safety standards and Aviation Security. Certification under the CAA satisfies UK aviation operational, safety and security requirements.
- 2.3 The CAA also assesses whether airport operators have substantial market power and, where appropriate, licence those that do. Airport economic licences can include conditions on price controls, specifying the quality of the services the

airport operator must deliver and how much it can charge the airlines that operate there.

Relevant approvals required from the CAA for the Development

- 2.4 Operations at Gatwick Airport must be in accordance with the following approvals relevant to the application:
- Aerodrome Certification – GAL holds an aerodrome certificate in accordance with ADR.AR.C.035 'Issuance of certificates' of UK Regulation (EU) No 139/2014; and Article 212 of The Air Navigation Order 2016 (ANO) and Regulations. Approval of any changes affecting infrastructure or management system is required from the CAA in relation to this licence;
 - Airspace Change - permission for a change in the design of airspace and how it is used safely in accordance with the CAA's CAP 1616 (Airspace Design: Guidance on the Regulatory Process for changing airspace design including community engagement requirements);
 - Air Traffic Service approval - where a certificated Air Traffic Service Provider provides services in accordance with Article 8(1) Regulation. 550/2004, the Service Provision Regulation, and Regulation 4 of the Single European Sky (Functions of the National Supervisory Authority) Regulations 2006.
- 2.5 In addition, operations at an airport will also have to be conducted in compliance with the following legislation:
- Aviation Security Act 1982, Aviation and Maritime Security Act 1990, Policing and Crime Act 2009, Regulation (EC) 300/2008 of the European Parliament and of the Council;
 - The Civil Aviation Act 1982 and 2012;
 - The Airports Act 1986; and
 - The Civil Contingencies Act 2004.

Aerodrome Certification

- 2.6 GAL, as the operator of a CAA certified aerodrome, is required by UK Regulation (EU) 139/2014 to seek prior approval from the CAA of impending changes affecting its infrastructure or management system. This requires a formal application to the CAA. The CAA's guidance document CAP 791 sets out the process to be followed and there is accompanying acceptable means of compliance and guidance material in this regard.
- 2.7 The Aerodrome Certificate application will require GAL to submit details of how it intends to satisfy all of the operational requirements laid down in UK Regulation

(EU) 139/2014 affected by the Development including, but not limited to, the following:

- Aerodrome Physical Characteristics
- Lighting
- Operational Procedures
- Rescue and Firefighting
- Integrated Emergency Planning
- Air Traffic Services
- Communications and Navigation Aids
- Safety Management System
- Security Management Systems
- Work in Progress
- Managing obstructions
- Maintenance
- Environmental Management

2.8 Submission by the applicant of CAA Form 2011 will begin the CAA's formal process in assessing the proposed changes.

Airspace Change

2.9 The CAA has two separate but related roles concerning airspace. First, we are directed by the Secretary of State to develop a strategy and plan for the use of all UK airspace for air navigation up to 2040, including for the modernisation of such airspace. Our approach to this is detailed in our Airspace Modernisation Strategy (AMS), which is set out in CAP 1711. Second, the CAA makes decisions on airspace change proposals¹. Change sponsors are required to follow our airspace change proposal (ACP) process, which is set out in CAP 1616 before submitting a proposal to us for decision. Our airspace functions are carried out in such a way as to give effect to our AMS subject to our statutory functions and duties.

¹ Proposals to change the design of airspace and/or how it is used safely.

Air Traffic Service approval

- 2.10 The CAA is responsible for safety oversight of all aspects of the Air Navigation Service Provider's (ANSP) operations and organisation. ANSPs are required to comply with the requirements in UK Regulation (EU) 2017/373 and this includes requirements for the ANSP to utilise Safety Management, Quality Management and Security Management systems all of which are subject to regular audit by the CAA.
- 2.11 ANSPs are required to notify the CAA of planned changes to their provision of air navigation services which may affect their compliance with the applicable common requirements or conditions of their certification.
- 2.12 The solution (people, procedures, equipment and facilities) enabling service provision at an expanded Gatwick will be the subject of an integrated suite of safety assurance (based on safety cases) and this will be subject to approval by the CAA. The CAA will audit the safety assurance process against the ANSPs' safety management systems.
- 2.13 ANSPs are required to apply to the CAA for approval of changes to their functional systems (eg. incorporating new ATCO procedures) and for the approval of Air Traffic Services Equipment (Article 205 Air Navigation Order 2016).
- 2.14 Form SRG 1430 will formally initiate the change process in relation to UK Regulation (EU) 2017/373. A separate application will be required for approval of the Air Traffic Services Equipment.

Economic Regulation

- 2.15 Under the Civil Aviation Act 2012 the CAA is the economic regulator for airports that the CAA has concluded have substantial market power, currently Heathrow and Gatwick, and issues economic licences that typically contain price controls and other conditions. Our price controls and related conditions are reviewed regularly, typically at intervals of between four and seven years. When carrying out our economic regulation functions, our primary duty is to further the interests of passengers and cargo owners regarding the range, availability, continuity, cost and quality of airport operation services. We also have secondary duties including (among others) having regard to the need for licensees to be able to finance their licensed activities, to secure that all reasonable demands for airport operating services are met, to promote economy and efficiency, and to allow licensees to take reasonable measures to reduce, control or mitigate the adverse environmental impacts of the airport.
- 2.16 We identify airports with substantial market power through a market power determination, where we assess whether the airport operator meets the market

power test in section 7 of the Civil Aviation Act 2012 (CAA12).^[1] This test consists of three parts, all of which must be met if the airport operator is deemed to have met the market power test:

- a) that the airport operator has, or is likely to acquire, substantial market power in a market, either alone or taken with other such persons as the CAA considers appropriate;
- b) that competition law does not provide sufficient protection against the risk that the airport operator may engage in conduct that results in an abuse of the substantial market power; and
- c) that, for users of air transport services, the benefits of regulating the airport operator by means of a licence are likely to outweigh the adverse effects.

- 2.17 We currently adopt a relatively light touch approach to the economic regulation of GAL, based on a set of commitments which include a price cap, service quality targets and a minimum investment requirement but which also provide scope for issues to be resolved on a bilateral or multilateral basis between GAL and airlines. The commitments are conditions of GAL's licence, and both GAL and affected airlines can appeal to the Competition and Markets Authority against our decisions on licence modifications.
- 2.18 The current commitments expire in March 2025, however GAL has recently proposed a four year extension to these commitments and we are currently assessing this proposal. An extension of four years (or similar) would allow for the next full review of GAL's commitments to be carried out once the outcome of the current DCO application is known and, if it is accepted, when there will be greater certainty about the timing and nature of the likely impacts on GAL's costs and revenues.
- 2.19 We would expect to take GAL's proposals for the northern runway into account when considering the price caps and other conditions to include in future commitments. Consistent with our primary duty to protect consumers, we would expect GAL to demonstrate an overall business case for its plans showing how its proposals are in the interests of consumers and are affordable for airlines, financeable and to what extent they will allow for capacity to be expanded in a way that mitigates the adverse environmental impacts of the airport. Among other things, we would also expect assurances that only efficient costs will be passed on to airlines and passengers (where 'efficiency' covers both the need for the underlying activity and the costs of delivering it), and that appropriate levels of service quality and resilience will be maintained both during the construction phase and when the new northern runway is operational.

^[1] We published guidance on our application of the market power test at www.caa.co.uk/CAP1433.

- 2.20 The CAA is also responsible for enforcing the Airport Charges Regulations 2011, which place non-discrimination, consultation (including on major infrastructure projects) and transparency obligations on airports serving over five million passenger a year.

Security

- 2.21 The CAA has been responsible for aviation security regulatory activity and compliance monitoring since 1 April 2014, when these functions transferred from the Department for Transport (DfT). The respective present roles of the DfT and CAA in the aviation security field are documented in CAP 1381, a Memorandum of Understanding and its annexed Statement of Responsibilities.
- 2.22 While the Government leads on international aviation security matters and UK aviation security policy (including the setting of security standards), the CAA regulates security arrangements at UK airports and for air carriers, cargo and in-flight suppliers to ensure that the relevant entities comply with UK and international security requirements. CAP 1550 gives an overview of our responsibilities, the most relevant of which for DCOs are:
- Compliance and enforcement - the CAA appoints authorised persons (i.e. Auditors) to carry out observations, inspections, audits and tests, and takes enforcement action if necessary (s.24A(1) of the Aviation Security Act 1982);
 - Advice and assistance to other persons - the CAA provides advice and assistance to those persons listed in subsection (3) of new s.21I of the ASA 1982 (e.g. managers of UK aerodromes and operators of aircraft registered or operating in the UK) as the CAA considers appropriate, having regard to the purposes to which Part 2 of the ASA 1982 applies (new s.21I of the ASA 1982).
- 2.23 Therefore, for airport expansion projects, applicants do not require an approval from the CAA in relation to security in order to proceed. However, during the construction phase and once expansion is achieved, their operations will be expected to meet all the relevant security regulations set out by Government. These operations will be subject to a CAA audit and, if found not to be compliant will be subject to enforcement action under ASA 1982.
- 2.24 In relation to aviation security, it should be noted that it is important that security managers work closely with project managers and designers to ensure that the relevant threats and risks are understood, and the right security outcomes are delivered through design. Guidance to airport operators is offered in the DfT publication 'Aviation Security in Airport Development 2017'. We would expect applicants to be engaging with its CAA Lead Auditor on the likely changes after the Development and during the construction phase to gain some comfort that it will be compliant.

Other areas

Noise

- 2.25 The CAA has three key roles in relation to aviation noise:
- Deciding whether or not to accept any proposal to change airspace design (developed under our CAP 1616 process) in accordance with UK law and noise policy. Detailed information is available on our airspace change pages. This is a statutory function. The Department for Transport gives us some guidance as how to take account of any environmental impacts in airspace change decisions.
 - Monitoring noise around some UK airports and publishing information about noise levels and impact. We do this for a range of paying customers including the UK Government, airport operators, airspace change proposers and local authorities. This is a non-statutory function.
 - Collaborating on and reviewing research into the effects of noise and how they can be mitigated, and offering advice to Government on these effects.
- 2.26 The CAA does not make decisions about the amount of noise that is considered damaging or a nuisance for people, nor does it make decisions about particular plans for airports, such as expansions. Further, CAP 1616 and the Air Navigation Guidance 2017 do not place any requirement on the CAA in terms of regulating noise on the ground at airports.

Carbon emissions

- 2.27 The CAA follows government policy and guidance on carbon emissions and air quality in making decisions about airspace change. It has a role in advising the government on the reduction of the industry's carbon emissions, the sharing of best practice, and the development of international initiatives such as emissions trading which is designed to address climate change.
- 2.28 The CAA also has a general duty to publish information on the adverse effects of aviation on the environment (CAA Act 2012, s.84)². The CAA does not make decisions about the amount of carbon emission appropriate for particular plans for airports, such as expansions.

² See [Environment | Civil Aviation Authority \(caa.co.uk\)](https://www.caa.co.uk)

Chapter 3

CAA engagement with GAL on its DCO

- 3.1 GAL has been engaging with CAA safety experts on the details of its proposed scheme throughout its development.
- 3.2 In December 2021, the CAA responded to GAL's statutory consultation. The next section summarises our response.

The CAA's response to GAL's statutory consultation

- 3.3 The CAA reviewed GAL's consultation documents from the point of view of its duties and expertise. Our response covered:
- Aerodrome safety
 - Economic regulation
 - Noise
 - Airspace
 - Other aspects – the economic appraisal and risks
- 3.4 On aerodrome safety, we made a number of comments about the detail of GAL's proposal, but noted that GAL was continuing to engage with us on matters of safety.
- 3.5 On Economic Regulation, we noted that, in paragraph 1.6.2 of the Consultation Overview Document, GAL stated that airport regulation and economic licensing were not in scope of the statutory consultation. We added that, as part of our economic regulation, we would expect GAL to demonstrate an overall business case for its plans showing how its proposals are in the interests of consumers and are affordable for airlines and financeable. Among other things, we would expect some degree of assurance that only efficient costs will be passed on to airlines and passengers (where 'efficiency' covers both the need for the underlying activity and the costs of delivering it), and that appropriate levels of service quality and resilience will be maintained both during the construction phase and when the new northern runway is operational.
- 3.6 On noise, we made some technical comments on noise measurement and calculation and suggested some extra analysis which could be undertaken.
- 3.7 On airspace, we made some minor technical points and highlighted a mistake in GAL's description of CAP 1908, the CAA's assessment of an airspace change proposal to request minor amendments to Gatwick Airport's AIP entry regarding its Northern Runway if, and only if, GAL successfully completed a DCO to 'bring

into operation the routine use of its existing standby/emergency runway (also known as the Northern Runway) at the same time as its existing main runway’.

- 3.8 On the economic appraisal, we suggested using a sensitivity case which also modelled Heathrow’s proposed third runway and queried the lack of generated demand in the London area as a result of the proposal.
- 3.9 On risks, we questioned whether increased traffic at the airport would also increase certain risks.

Further engagement with GAL

- 3.10 Following the CAA’s response, GAL engaged further with the CAA on some of the topics which we had highlighted in our response.

Chapter 4

The CAA's relevant representation on GAL's DCO application

- 4.1 The CAA has reviewed the documents from GAL's DCO application which it believes to be relevant to its duties. As noted above, GAL has also engaged with the CAA following its statutory consultation. The CAA therefore makes the following representations:
- 4.2 On **Aerodrome certification**, we have no principal areas of disagreement at this stage.
- 4.3 On **Economic regulation**, we have no further comments other than to note the CAA's duties and no principal areas of disagreement at this stage.
- 4.4 On **Noise**, GAL states in paragraph 14.2.47 that 'The Independent Commission on Civil Aviation Noise (ICCAN) was a non-statutory advisory body, established to act as the impartial expert adviser to Government and others on all matters relating to aviation noise from January 2019 to September 2021 when it was disbanded with its responsibilities being passed to the CAA.' This is not strictly correct as ICCAN was actually established in November 2018. Further, while the majority of its responsibilities were passed to the CAA, some remained within the Department for Transport on its disbanding.
- 4.5 We also note that GAL describes a role for the CAA as an Independent Air Noise Reviewer to scrutinise and verify the Annual Monitoring and Forecasting Reports (for example in Appendix 14.9.7 to the Environmental Statement (APP-177) paragraphs 7.1.2 to 7.1.10). GAL has not discussed the details of this role with the CAA. The CAA does not agree that it is appropriate for the DCO to designate an individual regulatory or oversight role absent a broader direction from Government. However, we are willing to explore with GAL how the requirements of such a role could become part of environmental publications which we are intending to have in place for the wider industry.
- 4.6 On **Airspace**, we note that in response to our consultation response, GAL has amended its description of the Statement of Need it submitted to the CAA in 2019 – see Chapter 6 of the Environmental Statement on the approach to assessment (APP-031), paragraph 6.2.19. We would suggest that this wording is amended further to emphasise that the CAA has made no decision concerning GAL's use of its Northern runway; we have only agreed that, if its DCO is successful, then certain aeronautical information can be changed in line with the new use of the runway. Our proposed revised paragraph is as follows:

6.2.19 In order to request the minor amendments to Gatwick's AIP (Aeronautical Information Publication), a necessary amendment once the DCO has been approved and works carried out to enable dual runway operations at Gatwick (with the realignment to the centreline of the northern runway), GAL submitted a Statement of Need within the scope of CAP 1616 (CAA, 2021) to the CAA on 11 November 2019. The CAA issued CAP 1908 in May 2020, assigning the airspace change as Level 0 as the proposal would not alter traffic patterns (CAA, 2020). In December 2020, the CAA issued its decision (Decide Gateway): 'The CAA has completed the Decide Gateway Assessment and is satisfied that the change sponsor has met the requirements of the Airspace Change Process. The CAA approves the implementation of this airspace change proposal.' CAP 1908 notes that all physical works associated with the Northern Runway Project would be considered through the Development Consent Order (DCO) consenting process. Therefore, provided that DCO consent is achieved the necessary amendment to Gatwick's AIP is in place to allow operations to commence as approved in the DCO.

- 4.7 In Chapter 6 of the Environmental Statement on the approach to assessment (APP-031), paragraphs 6.2.13 to 6.2.18, GAL discusses FASI-S, an element of the Airspace Modernisation Strategy described on the CAA's website³. It is the case that it is too early in the Airspace Modernisation programme to say what trade-offs will be required to resolve any conflict between the sponsors of separate airspace changes, or between different objectives. Therefore, it is also too early to say what benefits individual airports might achieve from airspace modernisation, whilst recognising that one of the goals for the AMS is to provide greater capacity overall.
- 4.8 The CAA has no further comments on airspace and no principal areas of disagreement at this stage.
- 4.9 On **Security**, we have no further comments other than to note the CAA's duties and no principal areas of disagreement at this stage.
- 4.10 Consequently, the CAA has only one principal area of disagreement to report to PINS as part of this relevant representation, which is described in the table below.

³ [Airspace Modernisation Strategy | Civil Aviation Authority \(caa.co.uk\)](https://www.caa.co.uk/air-traffic/air-traffic-management/airspace-modernisation/airspace-modernisation-strategy)

Principal Areas of Disagreement Summary Statement (PADSS) from Civil Aviation Authority		Version Number: 1 Submitted at: 29/10/2023	
Principal Issue in Question	Concern held	What need to change/be amended/be included in order to satisfactorily address the concern	Likelihood of concern being addressed during Examination
Proposed role of CAA as Independent Reviewer for AMFR	Role as described does not align with existing CAA duties	Description of role/review process to be removed from the DCO. Note CAA is willing to discuss with GAL whether noise reporting at Gatwick could be included as part of its wider environmental reporting role.	High