



Gatwick Airport Northern Runway Project

The Applicant's Response to Written Representations
Appendix B – Response to CAGNE

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1 Introduction

1.1.1 CAGNE's Written Representations cover a range of issues but a significant focus of CAGNE's case relates to matters of need and aviation policy.

1.1.2 To a large extent, the matters raised have been addressed by the Applicant in other submissions including:

- **Written Summary of Oral Submissions from Issue Specific Hearing 1: Case for the Proposed Development** [[REP1-056](#)].
- **The Applicant's response to Actions – ISH1: the Case for the Proposed Development** [[REP1-062](#)].
- **The Applicant's Response to Local Impact Reports** [Doc Ref. 10.15].
- **Appendix B - Response to Written Representations from the Joint Local Authorities** [Doc Ref. 10.15].
- **Appendix C - Response to Written Representations from Heathrow Airport Limited** [Doc Ref. 10.14].

1.1.3 Where appropriate, this response cross refers to those submissions. It begins by dealing with matters of national policy.

1.2 Aviation Policy

1.2.1 This response breaks the CAGNE Written Representations down to the following principal headings, before addressing them in turn:

1. **Heathrow** – the need is satisfied by the commitment to a third runway at Heathrow; only one new runway is supported in policy and that is to be at Heathrow; this proposal must show a need which is additional to or different from Heathrow;
2. **MBU policy does not apply to Gatwick;**
3. **MBU is only intended to support small scale developments**, consented by local authorities;
4. **Proposals in the DCO application go beyond MBU;**

5. References in policy to capacity, infrastructure and runways are deliberate and not interchangeable;

6. No conclusions can be drawn from the Jet Zero Modelling Framework which references the NRP.

1.2.2 These matters are addressed in turn. By way of introduction, there is no dispute that the general approach to the interpretation of planning policy is well established. Statements of policy are to be interpreted objectively in accordance with the language used, read in their proper context.¹ Interpretation of policy is reviewable by the courts, but there are limits to this process. Statements of policy are not statutory texts and are not to be construed as if they were. Whilst there may be issues of interpretation for a court which are capable of an objective answer regardless of the facts of any particular case, many policies are framed in language whose application to a given set of facts requires the exercise of judgment which is a task for the decision-maker.²

1.3 Heathrow, not Gatwick

1.3.1 The review by CAGNE of the ANPS proceeds from the agreed starting point that the ANPS is an important and relevant consideration in the determination of an application for development consent for airport development in the South East. These include the proposals for Gatwick in this case (see paragraphs 11-14 of the representation).

1.3.2 Equally there is no dispute (not least because the NPS says so) that in the determination of such application, the findings in the NPS that the preferred scheme at Heathrow is the most appropriate way of meeting the need for new airport capacity apply (paragraph 1.41).

1.3.3 However, the policy clearly acknowledges that an application for development consent for airport development may come forward at airports other than Heathrow, including Gatwick. Despite its extensive review of policy, CAGNE's representations that the ANPS supports only one new runway in the South East, and after careful consideration chose only a third runway at Heathrow to meet that need (see paragraphs 15-35), do not adequately recognise the further statements of policy set out in the ANPS. In addition to setting out government findings of a need "*to increase capacity in the South East of England by 2030 by*

¹ Tesco Stores Ltd v. Dundee City Council [2012] UKSC 13 at [18] (as confirmed to apply to an NPS in R (on the application of Scarisbrick [2017] EWCA Civ 787 at [19].

² See Tesco Stores at [19]; and Hopkins Homes Limited v Secretary of State for Communities and Local Government [2017] UKSC 37 at [24]-[26].

constructing one new runway” (paragraph 2.32), with the preferred scheme at Heathrow, the ANPS also set out that it is “*supportive of airports beyond Heathrow making best use of their existing runways*” (paragraph 1.39). The provision of the preferred scheme was not intended to preclude further development proposals coming forward by which other airports could make additional use of their existing runways. Whilst the ANPS settled government policy for the development of a new runway (at Heathrow), it recognised that the preferred scheme would not meet the totality of the needs, such that it sets out additional support for other airports to make best use of their existing runways and more intensive use of their infrastructure. It is wrong, therefore, for CAGNE to suggest that the ANPS provided policy support for the preferred scheme “alone” and that, as a result, “the Application does not, and cannot, benefit from any policy support from the ANPS” (see paragraph 20).

1.3.4 To the extent that the CAGNE representations do refer to policy on making best use of existing runways, CAGNE place this in the context of the support for constructing “one new runway” by way of the preferred scheme at Heathrow (see paragraph 36 of the representations).

1.3.5 The Applicant’s position in respect of Heathrow is briefly explained as follows:

1. The Applicant agrees that the ANPS identifies the need for one new full length runway in the south-east and that the Government decided it should be developed in the form of the North-West runway at Heathrow Airport. The Applicant takes no issue with that decision or the policy for the new runway at Heathrow. GAL recognises that there continues to be a need (supported in policy) for a third runway at Heathrow Airport.
2. The Applicant has already responded to the JLAs and others in relation to the interpretation of paragraph 1.42 of the ANPS, which recognises that it may well be possible to demonstrate a need for more intensive use of existing infrastructure at other airports which is additional to or different from the need which is met by a north-west runway at Heathrow.³ Read fairly, as a whole, that paragraph advises that airports wishing to make more intensive use of existing runways will need to submit an application for planning permission or development consent which should be judged on the application’s merits. The paragraph does not set additional tests for such an application but helpfully recognises that it may well be possible to demonstrate a need for such proposals.

³ See **Response to Submissions at Deadline 2** (Doc Ref.10.17) – particularly the response to the JLAs.

3. As set out in its **The Applicant's Response to Local Impact Reports** [Doc Ref.10.15] (and as extensively explained in the **Needs Case** [APP-250] which supports the application), the Applicant has submitted substantial evidence to demonstrate that there is a specific need at Gatwick Airport and its proposals are not based on supplanting Heathrow or replacing the important need for expansion of the UK's hub airport. The need for additional capacity at Gatwick exists now both to meet documented un-met demand and to overcome constraints at the airport which impact severely on its resilience.
4. The Applicant does not claim that Gatwick is or should become a hub airport and its proposals are not based on supplanting Heathrow or replacing the important need for expansion of the UK's hub airport. It has always been and would remain a point to point airport. **The Applicant's Response to Heathrow Airport Limited Written Representation** addresses this point directly [Doc Ref.10.14].

1.4 MBU Policy and Gatwick

No application to Gatwick

- 1.4.1 CAGNE also appears to rely (para. 36) on support in the ANPS for the "*more intensive use of existing airports other than Heathrow and Gatwick*" to suggest that the current proposals cannot benefit from policy support. This too is misconceived. CAGNE fails to recognise that the references it relies upon (see ANPS paragraphs 1.6 and 2.28) in fact record the findings of the Airport Commission, which was expressing its conclusions in the context of having shortlisted Heathrow and Gatwick as the candidates for a new full length runway. Once the government had decided that the preferred scheme was to be at Heathrow, this allowed MBU policy as set out in the ANPS to apply to Gatwick.
- 1.4.2 Despite the length of CAGNE's policy analysis, it omits reference to paragraph 1.39 of the ANPS which confirms that "*the government has confirmed that it is supportive of airports beyond Heathrow making best use of their existing runways.*" The earlier exclusion of Gatwick was dropped. Were there any doubt about this, it is settled by the terms of MBU at paragraph 1.25, which explicitly supports airports making best use of their existing runways, apart from at Heathrow Airport. Again, that clear policy reference is omitted from CAGNE's analysis.
- 1.4.3 CAGNE's further arguments on MBU are addressed below.

1.5 MBU Supports Only Small Scale Development

1.5.1 CAGNE wrongly contend that MBU does not apply to Gatwick, in particular because it only envisages “relatively small and local scale” development applications. This approach is misconceived.

1.5.2 CAGNE states (paragraph 42):

“Of course, MBU accepts the possibility of NSIP applications under its terms (MBU paragraph 1.27) but it is clear from reading the policy as a whole, that the expectation is for the majority of MBU-based applications to be on a relatively local level.”

1.5.3 It may be the case as a matter of fact that the majority of MBU applications are relatively small scale. However, CAGNE should recognise that its own quotation concedes that some MBU applications may be of a scale which qualifies them as NSIPs (an increase in capability of 10 mppa). That point is also acknowledged directly in Beyond the Horizon (at paragraph 1.27) and in the ANPS (at paragraph 1.42). There is, therefore, no substance in CAGNE’s point.

1.5.4 The Stansted decision in 2021 was the first decision to consider the implications of MBU policy expressed in Beyond the Horizon. It is clear from the Inspectors’ decision letter that the inquiry examined the background to MBU and that the policy to give in principle support to airports to make best use of existing runways was made *“in full knowledge of UK commitments to combat climate change”* (paragraph 18). That inquiry examined modelling assumptions behind the MBU policy (see paragraphs 18-21). The applicant’s forecasts for growth in that case exceeded the working assumptions used to inform MBU; a point raised by objectors, in response to which the Inspectors concluded:

*“28. The appellant’s forecasts do not align with those prepared by the Government in 2017 (DfT forecasts) which are used as the basis for conclusions in MBU, as referred to above. However, there is no reason why they should. The DfT makes clear that its forecasts are a long-term strategic look at UK aviation, primarily to inform longer term strategic policy. They do not provide detailed forecasts for each individual airport in the short-term and the DfT acknowledge that they may differ from local airport forecasts, which are prepared for different purposes and may be informed by specific commercial and local information not taken into account by the DfT. As such, the **DfT states that its forecasts should***

not be viewed as a cap on the development of individual airports.

(emphasis added)

1.5.5 In 2022 in his Manston’s decision letter at paragraph 47, the Secretary of State put the matter beyond doubt as follows:

“The MBU policy does not limit the number of MBU airport developments that might be granted and does not include a cap on any associated increase in ATMs as a result of intensifying use at MBU developments.” (emphasis added)

1.5.6 The decision letter explains at paragraph 64 that the reopening and growth of Manston Airport was not accounted for at all in the modelling which informed the MBU policy.

1.6 Scale of Proposals Goes Beyond MBU

1.6.1 CAGNE are also wrong to contend the proposals would not comply with MBU because they would involve the creation of a new runway. CAGNE’s particular point is that the policy supports *“making best use of existing runways and in that context of associated existing infrastructure, but not creating dual runway operations at a single-runway airport or undertaking significant construction works to build dual runway capacity”* (para. 42.3).

1.6.2 This, of course, is CAGNE’s own interpretation of the policy, which employs words that are not found within the policy document. There is nothing in the policy which describes or prescribes a particular limit to the extent of works that may be associated with making best use of an existing runway. CAGNE itself accepts that MBU can involve “operational works” (paragraph 73), including Gatwick “making improvements” to the northern runway (paragraph 44). It is accepted therefore, as common sense suggests, that the carrying out of alterations to an existing runway is compatible with it remaining an “existing runway”. However, CAGNE then seeks to place its own limit on what is acceptable.

1.6.3 In this case, it cannot sensibly be concluded that works which allow for the repositioning, only 12m to the north, of the centre line of what is plainly an existing runway remove the runway from the scope of an “existing runway” into being as “an entirely new runway” (CAGNE paragraph 76).

1.6.4 The Applicant has explained that the scale of development is entirely different from that which would be necessary to construct a full length new southern runway at Gatwick (see para. 3.2.14 of and **Appendix A to The Applicant’s**

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[[REP1-062](#)]. There is no sensible reason to criticise the Planning Statement for doing the same (see CAGNE submissions paragraphs 86-92). It is obvious that these works are also entirely different from what would be required to deliver a new runway at Heathrow (see paragraph 1.15 of the ANPS).

- 1.6.5 More generally, it is apparent from the TCPA and DCO MBU cases at Bristol, Stansted, Manston and Luton that making best use can involve a wide range of different types of works or measures. The fact is that what CAGNE describes as “further substantial development” (including the reconfiguration of taxiways, pier and stand alterations and the reconfiguration of specific airfield facilities) is consistent with the type of works proposed and consented elsewhere in order to make best use of existing runways. There is nothing in policy to suggest any limitation on the extent of related development which can be brought forward by way of making best use. The Applicant’s case is developed in Section 3.5 of **The Applicant’s Response to Actions - ISH 1: The Case for the Proposed Development** [[REP1-062](#)] which compares the scale of operational development in this case with that which has been sanctioned in the Stansted, Bristol, Luton and Manston decisions and that which is proposed in the name of MBU in the Luton Rising DCO. As the Inspectors concluded in the Stansted case, that **“There is nothing in MBU which suggests that making best use proposals cannot involve operational development”**.
- 1.6.6 The Aviation Policy Framework confirm the sense of this overall approach. Paragraph 1.24 states that the Government wants to see best use of existing airport capacity and then examples are given, as follows:
- **“Birmingham Airport has recently completed a terminal development project that will enable the airport to cater for 18 million passengers (compared with the approximately 9 million handled to date per year) and is taking forward plans for a runway extension. This will allow the airport to handle larger aircraft flying to more long-haul destinations from 2014, which will maximise regional opportunities and help meet additional UK demand.**
 - **Southend Airport has completed a programme of investment that has transformed the airport. A new terminal has been constructed, a runway extension that allows the operation of newer-generation, high-efficiency, medium-capacity aircraft has been completed, and an airport railway station that offers direct rail links to London opened in September 2011. As a result, Southend Airport expected to handle one million passengers in 2012 and create 500 new jobs.**

- *Leeds-Bradford Airport recently completed a £11 million development of its passenger terminal. This has created a **65% increase in airside space over two floors in the terminal.***
- *In addition, ongoing investment programmes at other airports such as Bristol, Manchester, Newcastle, Glasgow, Edinburgh, Belfast City and Belfast International are delivering additional improvements to airport capacity, airport facilities and the passenger experience.”*

- 1.6.7 These are not small-scale increments - and they include enhancements to existing runways (see too the upgrade of the runway at Manston). The NRP is entirely consistent with this scale and character of growth.
- 1.6.8 In so far as CAGNE contend that works at airports such as Stansted and Manston would have been covered by permitted development rights, they plainly were regarded as requiring applications for consent (due to the likely significant environmental effects they caused). There is in any event nothing in policy which suggests that this should be the basis for distinguishing between proposals that were consistent with MBU or not. As the Applicant has explained, these proposals would fall within the scope of permitted development rights anyway on the same approach (see section 3.2 of **The Applicant’s Response to Actions - ISH 1: The Case for the Proposed Development** [[REP1-062](#)]).
- 1.6.9 CAGNE’s assertion that the MBU policy does not apply to airports such as Gatwick “*introducing new runways*” (para. 45) entirely ignores the fundamental point that Gatwick already has two runways, but the northern runway is grossly under-used. The northern runway is an existing CAA certified, Code 4E, visual approach runway. It operates visual and Required Navigational Performance (RNP) based approach procedures in both runway directions. It is serviced by the published Standard Instrument Departure (SID) and Standard Arrival (STAR) routes and is capable of accommodating all codes of aircraft and facilitating approximately two thirds of the peak hour throughput of the main runway. In 2019, it was used by 2.8k flights. The runway is subject to a planning restriction, which the DCO application proposes to remove. A policy which encourages making better use of existing runways could scarcely be more apposite.
- 1.6.10 CAGNE accepts that MBU would allow Gatwick to improve the northern runway such that “it could be used more frequently or quickly as a standby runway, or for larger aircraft” (para. 44), but it fails to recognise that policy does not prescribe the operational circumstances under which use of an existing runway can be increased. There should be no dispute that the northern runway is an existing,

(under)-used runway; and that the proposal would make best use of it as policy envisages.

1.7 Infrastructure, Runways

- 1.7.1 CAGNE sets out a detailed analysis of the ANPS and Beyond the Horizon to assert that policy only supports best use of existing runways, rather than best use of existing infrastructure or best use of existing capacity (paragraph 43). It asserts that the terms “infrastructure” and “runways” are not used interchangeably in the ANPS or MBU, so as to conclude that this difference in wording does not support airports introducing new runways (paragraph 45).
- 1.7.2 As CAGNE recognises, its thesis is somewhat undermined by the references to capacity or infrastructure in the ANPS at paragraphs 1.42, 2.22 and 2.28 and by the terms of the APF which CAGNE has to argue (at its paragraph 58) must be regarded as out of date – despite its recent endorsement as up to date policy in the Jet Zero Strategy and the reliance placed on it by the Secretary of State in recent decisions. Similarly, Beyond the Horizon refers directly to the need to make more intensive use of existing infrastructure or existing airport capacity at its paragraphs 1.1, 1.2, 1.3 and 1.4. With respect, CAGNE’s proposition is undermined by the multiple exceptions to it set out in the policy documents.
- 1.7.3 In no interpretation of policy are the words being used to justify a new runway. The NRP makes better use of an existing runway.
- 1.7.4 The references in the ANPS to the findings of the Airport Commission on the need for more intensive use of existing infrastructure (see para. 1.39) suggest that there may be other measures which can also be used to increase the use of an airport. But if a distinction is to be drawn, it is a distinction without effect. If an airport makes better use of its airport, or of its capacity or of its infrastructure, the intended consequence would be increased or better use of its runways.
- 1.7.5 More significantly, the Applicant doubts that it can be seriously argued that government policy would do anything other than support making best use of existing airport capacity – there is no sustainability, economic or other benefit in existing airport capacity or infrastructure being under used whilst there is such a large-scale un-met need for aviation capacity.
- 1.7.6 Ultimately, the application proposals are concerned with making best use of Gatwick’s existing runways. Even if CAGNE’s proposition was correct, therefore, it is of no significance when applied to the application before this examination.

1.8 Jet Zero Modelling Framework

1.8.1 At its paragraphs 54 and 55 CAGNE seeks to reduce any weight which the Applicant may place on the fact that the NRP is modelled as part of the JZS – a matter which the Applicant explains at Section 3.4 of **The Applicant’s Response to Actions - ISH 1: The Case for the Proposed Development** [[REP1-062](#)].

However:

- the Applicant has never suggested that the inclusion of the NRP capacity in the JZS modelling framework represents policy support for the application; and
- neither has the Applicant ever suggested that the inclusion of the NRP pre-judges the outcome of any planning application.

1.8.2 The Applicant’s simple point is that paragraph 3.18 of the Jet Zero Modelling Framework has used airport capacity assumptions which are said by government to be aligned with government policies set out in the ANPS and Beyond the Horizon and this includes the NRP. That judgment by government is material.

1.9 Other Matters

Aviation Policy Framework

1.9.1 The Applicant has not fully understood the purposes of CAGNE’s paragraphs 47-53 but it appears to be CAGNE’s purpose to suggest that the Aviation Policy Framework is no longer up to date policy. If that is the case, the Applicant does not agree. The continuing relevance of the APF is confirmed in the ANPS at paragraph 1.38 and it continues to be applied as up to date policy by the Secretary of State. For example, in the Manston decision letter, the Secretary of State relies upon the APF at paragraphs 40, 48, 62, 106, 119 and 190.

1.10 Conclusion

1.10.1 For the above reasons, the suggestion that allowing the existing northern runway to be used more intensively would undermine the “fundamental limitation” of MBU policy or run “entirely counter to the aims and policy of the ANPS” is wholly misplaced. It is predicated on the assumption that national policy allows only for the development of the preferred scheme at Heathrow, failing and omitting to acknowledge that government has in terms expressed its support for other airports, including Gatwick, making best use of their existing runways so as to ease pressure on existing infrastructure and grow its domestic and international connectivity. Gatwick plainly has an existing runway that is not best used. Allowing its best use is entirely consistent with policy.

- 1.10.2 Whereas the CAGNE representations assume that the project will “undermine the remit” of the ANPS, the ANPS was intended to signal government support for airports making best use of their existing runways and does not include a needs test for projects seeking to do so. In any event, it is no part of the Applicant’s case to suggest that the project should supplant the Heathrow North-West runway or the process which led to its selection as the preferred scheme. It has set out a Gatwick-specific case on need which does not seek to compromise the international hub status of Heathrow. Any suggestion that the Applicant is “jumping the gun” ignores the clear recognition in policy that more intensive use of existing runways was viewed as imperative and necessary, not least because of the time that a new runway would inevitably take to develop. Both projects, along with the expansion of capacity at other airports, are necessary to achieve government policy objectives for UK aviation.