



**Horsham  
District  
Council**



# **GATWICK AIRPORT NORTHERN RUNWAY PROJECT**

Planning Inspectorate's Reference: TR020005

## **Legal Partnership Authorities**

### **Comments on The Applicant's Response To The ExA's Written Questions (ExQ1)**

#### **Response to [\[REP3-090\]](#) | Ecology and Nature Conservation**

**DEADLINE 4: 15 May 2024**

Crawley Borough Council (GATW-AFP107)

Horsham District Council (20044739)

Mid Sussex District Council (20044737)

West Sussex County Council (20044715)

Reigate and Banstead Borough Council (20044474)

Surrey County Council (20044665)

East Sussex County Council (20044514)

Tandridge District Council (GATW-S57419)

## Legal Partnership Authorities' Comments on the Applicant's Responses To The ExA's Written Questions (ExQ1)

### Response to [\[REP3-090\]](#) | Ecology and Nature Conservation

The Legal Partnership Authorities are comprised of the following host and neighbouring Authorities who are jointly represented by Michael Bedford KC and Sharpe Pritchard LLP for the purposes of the Examination:

- Crawley Borough Council
- Horsham District Council
- Mid Sussex District Council
- West Sussex County Council
- Reigate and Banstead Borough Council
- Surrey County Council
- East Sussex County Council; and
- Tandridge District Council.

In these submissions, the Legal Partnership Authorities may be referred to as the “*Legal Partnership Authorities*”, the “*Authorities*”, the “*Joint Local Authorities (“JLAs”)*” or the “*Councils*”. Please note that Mole Valley District Council are also part of the Legal Partnership Authorities for some parts of the Examination (namely, those aspects relating to legal agreements entered into between the Applicant and any of the Legal Partnership Authorities).

#### Introduction

1. The Legal Partnership Authorities have now had the opportunity to review the Applicant's responses to ExQ1 in conjunction with their specialist consultants and legal advisors.
2. The Applicant provided their response to ExQ1 in the form of 19 separate written submissions to the examination together with annexes. For the ExA's ease of review, the Legal Partnership Authorities set out their comments on the Applicants responses in the final column of the table below.
3. Where the Legal Partnership Authorities have decided not to comment on one of the Applicant's responses, this question has been deleted from the table below.
4. For the avoidance of doubt, where the Legal Partnership Authorities have decided not to comment on one of the Applicant's responses this should not be taken to indicate that the Legal Partnership Authorities agree with the response.

ExQ 1 Question to:		Question	Legal Partnership Authorities Response
<b>ECOLOGY AND NATURE CONSERVATION</b>			
EN.1 .5	The Applicant	<p><b>Biodiversity Net Gain</b></p> <p>It is suggested by the Joint Surrey Councils (JSCs) (paragraph 7.47 [REP1-097]) that although not a legal requirement, due to the long term and large-scale impacts of habitat loss the Applicant should be delivering Biodiversity Net Gain (BNG) in the local, regional and national interest.</p> <p>Please respond to this suggestion?</p>	<p>Although the Applicant claims that the Project will achieve over 20% BNG, the BNG calculations are based on the areas of habitat to be lost rather than all habitats within the DCO Limits as highlighted in Section 9.10 of the West Sussex Joint LIR [REP1-068]. Thus, the Applicant's approach does not follow the DEFRA BNG guidance. Given the extent of habitat loss and that the impacts, particularly of woodland loss, will be long term, it is considered that the proposed BNG is insufficient.</p>
		<p>The Applicant's approach to the delivery of BNG is as set out in <b>ES Appendix 9.9.2 Biodiversity Net Gain Statement</b> (Doc Ref. 5.3 v3). This highlights that the NRP will deliver over 20% net gain. The Applicant's proposed approach to securing its BNG commitment is discussed in response to EN.1.6 below.</p>	<p>Whilst the Legal Partnership Authorities understand that it is not directly applicable to the DCO context, the BNG statutory framework (<a href="http://www.gov.uk">Understanding biodiversity net gain - GOV.UK (www.gov.uk)</a>) provides a useful framework by which the delivery of BNG by development can be assessed. That framework clearly states that all habitats, whether or not they are impacted by the proposed development, are required to provide BNG. The Legal Partnership Authorities would suggest that, unless the BNG baseline is assessed in accordance with the statutory framework (considering all habitat within the DCO application boundary), the Applicant cannot claim that 20% BNG is being achieved. In fact, it may be that the scheme is delivering substantially less (or even a loss) and the ExA needs to be cognisant of this.</p>
EN.1 .6	The Applicant	<p><b>Securing Biodiversity Net Gain</b></p> <p>NE recommend in its RR [RR-3223] that the target increase in BNG is secured by a suitably worded requirement in the DCO.</p> <p>a) The Applicant is asked to explain whether and, if so, how the target increase in</p>	<p>The new section on BNG in the amended oLEMP [REP3-032] is welcomed.</p>

		<p>BNG of 22.5% habitat units and 16.7% watercourse units is secured in the dDCO.</p> <p>b) The Applicant is asked whether R8 should state that the landscape and ecology management plan for any part of the works must be substantially in accordance with the BNG Statement [APP- 136] in addition to the outline landscape and ecology management plan.</p>	
		<p>The Applicant considers that the most appropriate method of securing the measures which contribute to the conclusions in <b>ES Appendix 9.9.2: Biodiversity Net Gain Statement</b> (Doc Ref. 5.3 v3) is the incorporation of the relevant measures into <b>ES Appendix 8.8.1: Outline Landscape and Ecology Management Plan</b> (oLEMP) (Doc Ref. 5.3 v3) such that they are reflected in Landscape and Ecology Management Plans submitted pursuant to Requirement 8 of the <b>dDCO</b> (Doc Ref. 2.1 v6) by virtue of the requirement that such plans must be substantially in accordance with the oLEMP.</p> <p>An amended version of the <b>oLEMP</b> has been submitted at Deadline 3 (Doc Ref. 5.3 v3) that explicitly incorporates details of the measures relied upon in Section 8.</p>	
EN.1 .7	The Applicant	<p><b>Reprovision of Woodland Habitat</b></p> <p>The BNG Statement [APP-136] states that planting extensive areas of new woodland within the Project would not be possible because of the nature of an operational airport and the requirements with respect to aircraft safeguarding.</p> <p>a) The Applicant is asked to explain why replacing lost woodland habitat with new woodland habitat on a like for like basis within the project poses any greater risk to aircraft safeguarding than that which exists in the baseline scenario?</p> <p>b) The Applicant is asked if it considered alternative options of providing areas of new woodland at a further distance from the airport or as off-site compensatory habitats</p>	<p>The Authorities recognise the importance of airport safeguarding and the need to minimise the risk of bird strike. However, they do not accept this as a reason not to provide sufficient compensatory woodland habitat, either on-site or off-site. As highlighted in Section 9.75 of the West Sussex Joint LIR [REP1-068], the Authorities remain concerned that there is insufficient compensatory woodland planting and request greater clarity on the extent of habitat creation.</p> <p>It is our understanding that ‘risk’ species for bird strike include large birds - wildfowl (ducks, geese and swans) or large flocks of smaller birds, such as starling. It is unclear how woodland / shrub/ tree planting increases</p>

		<p>as a way of meeting Habitat Trading standards without affecting aircraft safeguarding. If so, the Applicant is asked to explain why alternatives were discounted.</p>	<p>the likelihood of bird strike, especially if the new planting was to be located 'off-site'.</p>
		<p>(a) Bird strikes are extremely hazardous to flight safety and even relatively minor events can result in costly repairs and aircraft downtime. Secondary risks can arise when a strike occurs and other wildlife (birds and land creatures) are drawn to feed on the carrion. Consideration is also given to how the public uses the landscape, as apparently innocuous activities such as picnicking or bird feeding can encourage risk species. Great care is taken to avoid the establishment of new commuting routes which would cross the airport or the extended approaches to the runway. The Aerodrome is required to comply with the UK Regulation (EU)139/2014 Implementing Rule ADR.OPS.B.020 Wildlife strike hazard reduction, and extensive CAA guidance is provided within CAP772 Wildlife Hazard Management at Aerodromes.</p> <p>The wildlife hazard safeguarding considerations are holistic and consider the presence of risk species, their known patterns of activity and how they move through the landscape diurnally and seasonally. The greater part of loss of trees as a result of the Project is limited to planting alongside the highways to the north of the airport boundary (as a result of the highway improvements proposed as part of the Project). There is limited space within the roads corridor to replant trees on a like for like basis once the revised road geometry has been accounted for. Replanting within the corridor has also needed to account for the appropriate design standards with respect to the proximity of trees to the revised road layout. Additional woodland planting will be provided in the new public open spaces to the north of Longbridge Roundabout (Church Meadows) and within the former Car Park B. The Project has therefore maximised the replanting of woodland that is possible within the context of the areas where it is to be lost.</p> <p>The re-provision of woodland elsewhere within the Project site would involve planting closer to the runways and could increase risk of commuting by risk species across them. The overall approach to woodland habitat creation has been to avoid closed canopy woodland forest of oak, beech, hornbeam, pine which could mature to provide new habitat for risk species (e.g. Buzzards/Corvids) closer to the runway. Where woodland planting does occur (e.g. at Pentagon Field), it is from an approved palette which will be less attractive to risk species. As set out in</p>	

		<p>Annex 3 of <b>ES Appendix 9.9.2 Biodiversity Net Gain Statement</b> (Doc Ref. 5.3 v3), overall, the Project will be providing a net gain in both area and value for scrub, wetland, water courses and individual tree habitats, with a large net gain in value of grasslands present.</p> <p>(b) The Project provides extensive new habitats of ecological value that lead to the delivery of a BNG over 20%. Such habitats include the grasslands and woodland edge at Brook Farm, the marshy grassland and Open Mosaic Habitat at Museum Field and the Mole diversion corridor, for example. Brook Farm was not part of the original airport and was brought into the Project boundary for the purpose of biodiversity enhancement. Likewise, Museum Field is an agricultural field outside of the current airport boundary, and although its intended future function is primarily with respect to fluvial flood management, the opportunity to provide significant biodiversity enhancement in this area has been taken. The works to the River Mole will also create 300m of new naturalised river valley to replace a stretch of river which is currently netted and canalised. Details of how these habitats fit together holistically are set out in Section 6 of <b>ES Appendix 8.8.1 Outline Landscape and Ecology Management Plan</b> (Doc Ref. 5.3 v3). Planting of woodland in these offsite areas was explored and has been taken, where safe to do so (for example, wet woodland along Horley Road, woodland edge habitat around existing mature tree lines). The position of the Project with respect to the BNG trading rules was accepted by Natural England (Section 5.11) in their Relevant Representation <a href="#">[RR-3223]</a>.</p>	
EN.1 .9	The Applicant	<p><b>Monitoring and Maintenance of Woodland Planting</b></p> <p>The Outline LEMP [APP-113] does not set out the duration for which monitoring, management and maintenance of mitigation measures would be secured. Woodland planting would not have reached maturity until approximately 2060 according to paragraph 9.9.66 of the ES [APP-034].</p> <p>Given that long-term moderate adverse significant effects are anticipated relating to loss of woodland and scrub habitat, can the Applicant explain how the ExA can be confident that appropriate monitoring, management and maintenance of mitigation measures are secured by the DCO for the timescale required for woodland habitats to mature?</p>	Confirmation in the updated oLEMP that maintenance and management will be undertaken for at least 30 years is welcomed. However, it is still of concern that the oLEMP is so lacking in detail regarding ecological monitoring.

		<p>Arrangements for monitoring, managing and maintaining landscaping and ecology proposals will be detailed within the Landscape and Ecology Management Plans, to be submitted and approved by Crawley Borough Council (in consultation with other relevant planning authorities) in accordance with Requirement 8 of the <b>Draft DCO</b> (Doc Ref. 2.1 v6) and in substantial accordance with the <b>Outline Landscape and Ecology Management Plan</b> (oLEMP) (Doc Ref. 5.3 v3). Section 11 of the oLEMP details the key maintenance operations for specific landscape types and features, including those relevant to native woodland and buffer planting in Section 11.3, along with a typical programme for maintenance in Annex 1 and a maintenance schedule in Annex 2.</p> <p>Section 10 of the <b>oLEMP</b> (Doc Ref. 5.3 v3) submitted at Deadline 3 confirms the minimum duration of maintenance and management of planting (including woodland) as being 30 years from the date of completion of planting, which the relevant LEMP(s) must be in accordance with.</p>	
EN.1 .12	The Applicant	<p><b>Light Spill from MSCP Y</b></p> <p>The proposed MSCP Y is directly adjacent to new woodland planting associated with the surface access works. Volume 5 of the DAS [APP-257] states that the façades of MSCPs will maintain open areas for natural ventilation and that in most locations there is not a need for additional cladding. There does not appear to be any information in the Operational Lighting Framework [APP-077] relating to controlling light spill from MSCPs.</p> <p>Given that reasons for the proposed woodland include to compensate for loss of existing habitat, provide nesting sites for breeding birds and to maintain connectivity for bats, can the Applicant:</p> <ol style="list-style-type: none"> <li>a) Explain whether light spill from the MSCP will impact the quality of the proposed woodland habitat; and</li> <li>b) Describe the measures that will be incorporated into the design to limit light-spill from MSCP Y.</li> </ol>	<ul style="list-style-type: none"> <li>• It is considered that the Applicant has not addressed the question with regard to the impact on the quality of the woodland.</li> <li>• While there are 2 design principles LA8 and LA11 specified in respect to lighting in Appendix 1 of the DAS [REP3-056], there is no design detail provided to control visual and light impacts on nearby woodland in terms of building form. The Authorities consider that the Applicants should not just rely on a lighting solution but embed mitigation into the design of the building. For example, the sides of the building could be more enclosed on the elevations facing the woodland or louvred to reduce light pollution. Moreover, tall lighting columns could be omitted from the top deck and replaced with lower level lighting. There is no specific design detail or principles for Car Park Y in Appendix 1 [REP3-056], a point related to concerns already raised in the West Sussex LIR Chapters 8, 21 and 24 [REP1-068]. Additional detail should be provided on the finish of the car park to address not just light spill on the woodland but also its visual impact on properties to the</li> </ul>

		<p>Measures to control lighting will be secured through DCO Requirement 4 (see <b>Design and Access Statement Appendix 1 – Design Principles</b> (Doc Ref. 7.3 v3). Design Principle LA11 is specific for bats – “<i>LA11 Lighting will be designed to avoid disturbance to areas of value for bats by shielding adjacent habitats of value</i>”. Design Principle LA8 states: “<i>In general, lighting should be controlled to remain contained within the site boundary. Positioning and the use of shields could be used to prevent unintended light spill</i>”. Designing lighting to this principle will prevent the quality of the proposed woodland habitat being impacted.</p> <p>Mutli-storey Car Park Y will be designed according to these Design Principles, secured by Requirement 4 of the <b>dDCO</b> (Doc Ref. 2.1). As such, light spill from the car park into adjacent habitats that could be of value to bats or breeding birds (which would include new planting along the proposed surface access works) will be avoided through design.</p>	<p>north. It is still considered there is inadequate control on the design and appearance of Car Park Y and the Authorities consider that the design principles for the Works should be further developed taking account of the sensitive site context.</p>
EN.1 .13	The Applicant	<p><b>Bat Roost Surveys</b></p> <p>In their LIR [REP1-097] the JSCs identify at paragraph 7.42 that no bat roost surveys of ‘high’ or ‘medium’ trees proposed for removal have been carried out to inform the baseline and impact assessment.</p> <p>Why have such surveys not been carried out? As this appears to be in contravention of policy, should the Order be granted, would surveys be carried out before construction commences?</p> <hr/> <p>Surveys of trees for the presence of roosts of key woodland bat species formed part of the landscape-scale radio tracking study completed as part of the submission (<b>ES Appendix 9.6.3 Bat Trapping and Radio Tracking Surveys</b> [<a href="#">APP-131</a> and <a href="#">APP-132</a>]). No trees that are proposed for removal (based on the preliminary design work and removal plans) were found to support roosts of the woodland species (including Bechstein’s bat). In addition, the activity surveys undertaken to date found the vegetation along the A23 to be predominantly of low value to foraging and commuting bats compared to other parts of the Project site. The low numbers</p>	<p>It is our understanding that these surveys are underway at present (see GAL’s response to LIR). Pending results, mitigation measures may need to be updated.</p>



		<p>recorded suggest this does not constitute an important roost location for bats.</p> <p>Subject to the final detailed tree removal and protection plans being confirmed prior to construction commencing (through the Detailed Arboricultural and Vegetation Method Statements detailed in <b>CoCP Annex 6</b> (Doc Ref. 5.3)), further bat roost surveys will be carried out in accordance with paragraph 5.4.18 of <b>ES Appendix 5.3.2: Code of Construction Practice [REP1-021]</b>. As set out in Table 9.8.1 of <b>ES Chapter 9: Ecology and Nature Conservation [APP-034]</b>, mitigation for the loss of any roost would be determined post survey, depending on the type of roost located. Given the surveys completed to date, it is anticipated that any roosts that are located in this area will be of low conservation status (such as day roosts for commoner species). Mitigation for the loss of such roosts will be straight forward to accommodate within retained woodland</p>	
EN.1 .14	The Applicant	<p><b>Great Crested Newts</b></p> <p>In their LIR [REP1-097] the JSCs identify at paragraph 7.43 that a translocation exercise is required to mitigate for adverse impacts to populations of great crested newts.</p> <p>Explain how this would be undertaken and how it would be secured through the DCO.</p>	<p>Whilst it is understood that any GCN translocation exercise would be undertaken under licence from Natural England, the lack of information on receptor sites and their management is of concern. Furthermore, it is of concern that there are no proposals for the creation of new ponds to maintain and enhance the existing GCN populations.</p> <p>It is standard practice for an 'outline mitigation strategy' to be submitted prior to planning approval. Whilst we appreciate the finer detail will come later, a high-level overview is required – i.e. where are the GCN being translocated? So as to be satisfied that the 'favourable conservation status' of the population will be maintained.</p>
		<p>As set out in Table 9.8.1 of <b>ES Chapter 9: Ecology and Nature Conservation [APP-034]</b>, any translocation exercise would be undertaken under appropriate licence from Natural England, issued under the relevant legislation. As such, there is no requirement for such work to be secured through the DCO as it is subject to separate legal controls (see Table 2.2.1 in <b>List of Other Consents and Licences</b> (Doc Ref. 7.5 v2)).</p>	