



Gatwick Airport Northern Runway Project

Appendix H: Note on Excepted Development and the Airport Development Principle

Book 10

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1 Project Design

- 1.1.1 The Applicant is keen to ensure that the Project reflects good design practices and delivers high quality development. To that end, the Applicant has already committed that all parts of the authorised development must be carried out in accordance with the **Design Principles in Appendix 1 of the Design and Access Statement** [\[REP3-056\]](#) through requirements 4, 5 and 10 in the **draft DCO** [\[REP3-006\]](#).
- 1.1.2 Following input from the Joint Legal Authorities ("**JLAs**") and the ExA in ExQ1, the Applicant undertook a comprehensive review of the Design Principles and submitted an updated version at Deadline 3. The Design Principles have been prepared by architects Chapman Taylor and form an appendix to the Design and Access Statement which sets out a comprehensive approach to design, identifying a series of areas and taking into account the different activities, character and purpose of each area. The Applicant continues to take comments and queries into account and consider how the Design Principles and design process can be refined to best articulate the Applicant's vision for the delivery of the Project. As part of that, and as further detailed in the main body of the Applicant's **Response to Deadline 3 Submissions** (Doc Ref. 10.24), the Applicant is exploring incorporating a formal design review process, such as the appointment of a Design Advisor.
- 1.1.3 The Applicant's approach to the oversight of the final design of "excepted development" must be considered in this important context.
- 1.1.4 This note sets out the Applicant's rationale for the inclusion of a category of "excepted development" in the draft DCO and how the Applicant proposes to amend the draft DCO in light of the JLAs' comments. This note supplements the Applicant's **Response to Deadline 2 submissions** [\[REP3-106\]](#) in respect of the JLAs' comment on Action Point 10 in their **Comments on any submissions received by Deadline 1** [\[REP2-081\]](#).

2 Airport Development Principle

- 2.1.1 The Applicant, Gatwick Airport Limited, is a "relevant airport operator" under section 57A of the Airports Act 1986 and therefore benefits from the permitted development right in Class F, Part 8, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the "**2015 Regulations**"), which authorises:

"The carrying out on operational land by a relevant airport operator or its agent of development (including the erection or alteration of an operational building) in connection with the provision of services and facilities at a relevant airport."

- 2.1.2 By the inclusion of this permitted development right in the 2015 Regulations ("**Class F**"), it was the intention of Government (under the authority of Parliament) that airport operators should be able to carry out the specified types of development in connection with the operation of their airport without obtaining separate planning permission or detailed approvals from the local planning authority. This reflects the rationale that airport operators are best placed to determine the necessary development in connection with services and facilities at their airport and that delays or hurdles to the carrying out of such development should be minimised to ensure the efficient and effective operation of airports, save for development of the type specified in paragraph F.1 which is not covered by Class F. We shall refer to this as the "**Airport Development Principle**".
- 2.1.3 The Applicant has applied for development consent for the Project and has carried out a comprehensive EIA¹. It is therefore clearly not seeking to utilise Class F itself or the full extent of the Airport Development Principle as manifested in that permitted development right to build out the Project. However, the Applicant does intend that the Airport Development Principle be reflected in the way in which detailed design approval is incorporated into the DCO for types of development which would in other contexts benefit from Class F.

3 DCO Approach

- 3.1.1 To reflect the Airport Development Principle, the current **draft DCO** [REP3-006] defines some parts of the authorised development as "excepted development", being development *"which falls within Schedule 2, Part 8, Class F of the 2015 Regulations and does not fall within the description of development in F1 of those Regulations"*.
- 3.1.2 In the draft DCO, excepted development is not subject to detailed design approval by Crawley Borough Council ("**CBC**"). Instead, CBC must be consulted on the proposed excepted development in the same manner as if that development were being brought forward under Class F and the excepted development must be carried out in accordance with the Design Principles in Appendix 1 of the Design and Access Statement (requirement 4). Similar

¹ Environmental Impact Assessment

provision is made for excepted development involving surface or foul water drainage (requirement 10).

3.1.3 The draft DCO defines excepted development by express reference to Class F as this was considered the best way to incorporate the Airport Development Principle into the draft DCO, given that the 2015 Regulations are the source of that principle. It was also considered to be the most efficient drafting approach, rather than listing out specific work numbers in the definition. However, this express reference to the 2015 Regulations has led to objections from the JLAs in their **Comments on any submissions received by Deadline 1** [\[REP2-081\]](#) on the bases that:

3.1.3.1. the Project as an indivisible whole is EIA development and therefore no element of the Project could be developed pursuant to the 2015 Regulations; and

3.1.3.2. some of the proposed works within the Order limits are on land that is not currently the Applicant's operational land and which therefore does not benefit from the Class F permitted development right at present.

3.1.4 The Applicant notes that these objections are premised on a hypothetical counterfactual where elements of the proposed development are brought forward pursuant to the 2015 Regulations in the absence of the DCO, rather than addressing the Airport Development Principle and how that informs what elements of the development authorised by the DCO should or should not be subject to detailed design approval by the local authorities following grant of the DCO.

3.1.5 The Applicant's further comments on the JLAs' concerns are as follows:

(a) EIA concerns

3.1.6 The JLAs have stated that Class F is irrelevant to the level of design approval appropriate for elements of the Project because the Project as an indivisible whole is EIA development and regulation 3(10) of the 2015 Regulations provides that EIA development is not authorised by those Regulations.

3.1.7 Regulation 3(10) aims to ensure that EIA cannot be avoided by reliance on permitted development rights such that potential impacts are not assessed and, where required, mitigated. There is no risk of this for the Project, which has been subject to a comprehensive EIA and which encompasses a suite of mitigation measures in the draft DCO, control documents and section 106 agreement. There is no need for the design control provisions in the draft DCO to fulfil any

role in respect of the EIA for the Project. In this context, where a particular work is of a type to fall within the scope of Class F, concerns that this work when grouped with other works (including a major highway scheme) would be EIA development is not an answer to the Airport Development Principle. The work is the type of work for which an airport operator was intended to have design autonomy and the fact that the work forms part of a wider scheme, the impacts of which have been assessed and mitigated, does not change that.

(b) Operational land concerns

- 3.1.8 In its **Responses to Actions from Issue Specific Hearing 2 (Action Point 10)** [REP1-063], the Applicant provided a preliminary categorisation of the work numbers in Schedule 1 of the draft DCO into those that would or would not constitute excepted development. In addition to their general objection regarding EIA above, the JLAs have also disagreed with several of the Applicant's preliminary categorisations on the basis that the stated works are on land which is not currently the Applicant's operational land.
- 3.1.9 The Applicant provided a detailed explanation in its **Responses to Actions from Issue Specific Hearing 2 (Action Point 9)** [REP1-063] regarding operational land, which is not repeated here. However, two key points are that (i) whether parts of the Order land are the Applicant's operational land at a particular point in time is a fact-specific question which depends on the purpose for which land is being used or held at that time; and (ii) the extent of operational land will change as a result of the grant of, and exercise of powers under, the DCO.
- 3.1.10 It should be emphasised that the Applicant is seeking development consent for a project to facilitate airport growth. Land in which the Applicant acquires an interest (including pursuant to the Order powers) which it will hold for the purpose of carrying on its undertaking will rightfully be its operational land, as part of the growing airport. The Airport Development Principle must apply to development to be carried out within the growing airport once the Project and that growth has been approved by the grant of the DCO, in the same way as it applies to development within the current bounds of the operational airport. There is no principled distinction between development to be carried out e.g. in the middle of the airfield (currently the Applicant's operational land) and development such as Work No. 33 (works at Purple Parking), which will take place on land currently in third party ownership but which will become the Applicant's operational land by virtue of the DCO. In both scenarios the development is being carried out by the Applicant in its function as an airport operator in relation to the functioning of the airport.

4 Work-Specific Approach

- 4.1.1 Given the above, the Applicant considers that the current approach to "excepted development" in the draft DCO can be clarified so as to continue to embody the Airport Development Principle but without expressly tying the mechanics of design approval under the DCO to the wording of Class F. The Applicant proposes to amend the draft DCO at Deadline 5 to specify by reference to a set list of work numbers those works for which detailed design approval by the relevant local authorities is appropriate, rather than defining a concept of "excepted development" by reference to Class F. The list of work numbers is based on the Airport Development Principle, informed by the scope of Class F. If the JLAs have particular concerns with certain works not being subject to detailed design approval, they are invited to articulate those concerns by reference to the Airport Development Principle such that the justification for detailed design approval in respect of that work can be discussed between the Applicant and the JLAs.
- 4.1.2 The works for which the Applicant considers detailed design approval to be appropriate are:
- 4.1.2.1. Work No. 22(a) - (c) (extending the North Terminal International Departure Lounge)
 - 4.1.2.2. Work No. 23(a) (extending the South Terminal International Departure Lounge)
 - 4.1.2.3. Work No. 26 (hotel north of multi-storey car park 3)
 - 4.1.2.4. Work No. 27 (hotel on the car rental site)
 - 4.1.2.5. Work No. 28(a) (hotel on the Car Park H site)
 - 4.1.2.6. Work No. 35 (works associated with the South Terminal junction improvements)
 - 4.1.2.7. Work No. 36 (works associated with the North Terminal junction improvements)
 - 4.1.2.8. Work No. 37 (works associated with the Longbridge Roundabout junction improvements)
 - 4.1.2.9. Work No. 40(a) (pedestrian footbridge over the River Mole)

5 Conclusion

- 5.1.1 It is hoped that this note provides greater clarity as to the Applicant's rationale for the concept of "excepted development" and that the revised approach outlined above offers greater certainty for the JLAs as to the scope of works for which detailed design approval is appropriate. The Applicant considers that any approach taken in the DCO should reflect the Airport Development Principle and that objections by reference to a hypothetical counterfactual use of the Class F permitted development right as per the 2015 Regulations misunderstands the Applicant's position.