



Gatwick Airport Northern Runway Project

Written Summary of Oral Submissions CAH1: Compulsory Acquisition

Book 10

VERSION: 1.0

DATE: MAY 2024

Application Document Ref: 10.25.3

PINS Reference Number: TR020005

Contents

1	Introduction	2
2	Agenda Items 1 and 2: Welcome, introductions and arrangements for the Hearing; Purpose of the Hearing	2
3	Agenda Item 3: The Applicant's case for Compulsory Acquisition and Temporary Possession	4
4	Agenda Item 4: Site-specific issues for the Applicant	12
5	Agenda Item 5: Site-specific representations by Affected Persons	14
6	Agenda Item 6: Sections 127 and 138 of the PA2008 - the acquisition of Statutory Undertakers' land and the extinguishment of rights and removal of apparatus of Statutory Undertakers	16
7	Agenda Item 7: Section 135 of the PA2008 – Crown land	19
8	Agenda Item 8: Category 3 persons	20
9	Agenda Item 9: Funding	21
10	Agenda Items 10, 11, and 12: Action points arising from the Hearing, Any other business, and Close of Hearing	23

1 Introduction

- 1.1.1 This document contains Gatwick Airport Limited's (the "**Applicant**") summary of oral evidence and post hearing comments on submissions made at Compulsory Acquisition Hearing 1 ("**CAH1**") held on 2 May 2024. Where the comment is a post-hearing comment submitted by the Applicant, this is indicated. The Applicant has separately submitted at Deadline 4 (Doc Ref. 10.26.4) its response to the Examining Authority's ("**ExA**") action points arising from CAH1, which were published on 7 May 2024 [[EV14-005](#)].
- 1.1.2 This document uses the headings for each item in the agenda published for CAH1 by the ExA on 17 April 2024 [[EV11-001](#)].
- 1.1.3 The Applicant, which is promoting the Gatwick Airport Northern Runway Project (the "**Project**") was represented at CAH1 by Scott Lyness KC, who introduced the following persons to the ExA:
- a. John Rhodes OBE, Senior Director, Quod.
 - b. Tim Norwood, Chief Planning Officer, Gatwick Airport Limited.
 - c. Darren Atkins, Principal Highways Engineer, Arup.
 - d. Mike Ferens, Director, Dalcour Maclaren.

2 Agenda Items 1 and 2: Welcome, introductions and arrangements for the Hearing; Purpose of the Hearing

- 2.1.1 The ExA noted that the Applicant had requested to address the ExA following the closing comments of the ISH7 hearing.
- 2.1.2 The Applicant apologised for the misunderstanding about the substance to be covered under the agenda item "future baseline" in ISH7 and explained that the Applicant's submissions and available experts was based on what was understood to be the focus of environmental matters for the agenda.
- 2.1.3 The Applicant submitted that following ISH7, discussions were held with Ms Congdon from York Aviation to try and identify a way forward in relation to the current gap between the parties in respect of the future baseline forecasts. The Applicant explained that the terms of this update being provided to the ExA had been shared with Ms Congdon who was happy that they should be outlined in this way, although this was not a formal agreed position as time had not allowed for her to take formal instructions.

- 2.1.4 The Applicant gave context to its submission, stating that its position on the future baseline is summarised in the application and in the **Technical Note on Future Baseline** [REP1-047] which forecasts an increase in throughput of the airport without the NRP:
- “1.2.2 Under Gatwick Airport’s baseline scenario, growth is forecast to continue. The airport is forecast to handle 59 million passengers in 2032, 62 million in 2038 and 67 million in 2047.”*
- 2.1.5 This compares with a base throughput of 46.6 mppa in 2019, highlighting an increase of approximately 20 mppa at Gatwick Airport in the absence of the NRP. Figure 1.2 of the Technical Note shows that the growth of 20 mppa is assumed to be broken down into 4 contributions:
- peak growth of 2 mppa
 - peak spreading of 5 mppa
 - aircraft size of 9 mppa
 - load factor of 4 mppa.
- 2.1.6 York Aviation for the Joint Local Authorities (“JLAs”) set out their position in Appendix B to the JLAs **Deadline 3 Submission – Comments on any further information/submissions received by Deadline 2** [REP3-117] – at para 48 on e-page 47 in which York Aviation explains they *“do not believe that it is realistic to assume that Gatwick will be able to handle 67.2 mppa in the baseline case over the period to 2047. A more reasonable baseline would be in the range 55-60 mppa.”*
- 2.1.7 Of the four steps in growth to the Future Baseline set out in the Technical Note, York Aviation have said that they are most doubtful about the forecast growth in peak traffic and peak spreading. As explained in Appendix B to the JLAs Deadline 3 Submission, those doubts relate not so much to runway and airfield capacity assumed in the baseline but to the likelihood of airlines’ willingness take up the remaining spare capacity in a viable manner for the reasons acknowledged by the Applicant in the **Applicant’s Response to Local Impact Reports Appendix A** [REP3-079] at paragraph 6.1.32.
- 2.1.8 It is helpful therefore to note that good progress has been made on issues of capacity. The issues between the Applicant and the JLAs have been narrowed to those relating principally to the ability to add ATMs in the peak or off-peak period. The Applicant stated that the parties are in regular dialogue and the Applicant had submitted a detailed draft Statement of Common Ground to the JLAs to try to capture the precise areas of disagreement and agreement.

- 2.1.9 The Applicant reported that it was preparing its written response to Appendix B to the JLAs Deadline 3 Submission for submission at Deadline 4.
- 2.1.10 **[Post-hearing note:** the Applicant's Response to York Aviation's Deadline 3 Submission is submitted at this Deadline 4 as **Appendix A** to the **Applicant's Response to Deadline 3 Submissions** (Doc Ref. 10.24).]
- 2.1.11 Against that background, the Applicant suggested the following four steps as a way forward:
- The Applicant will continue to engage with York Aviation up to Deadline 4 to see if the disagreements between the parties can be narrowed.
 - If agreement cannot be reached by Deadline 4, York Aviation will submit a future baseline figure to the Examination which they and the JLAs consider would be helpful for the Applicant to use in a sensitivity analysis as an alternative future baseline. That specification will identify what adjustments should be made to the four components of growth.
 - Any specification provided to the Examination would be without prejudice to the ongoing discussions between the parties.
 - The Applicant will then provide a without prejudice analysis of the effect of that alternative future baseline to test or provide assurance that the principal effects of the NRP have not been understated. It is likely that this will be complete by Deadline 5.
- 2.1.12 **[Post-hearing note:** on 9 May 2024 the ExA issued a **Rule 17 Letter** [\[PD-018\]](#) acknowledging this statement made by the Applicant at the beginning of CAH1 and requesting further information on the future baseline to be submitted at Deadline 4. The Applicant has responded to this request in the **Cover Letter** to its Deadline 4 submissions.]

3 **Agenda Item 3: The Applicant's case for Compulsory Acquisition and Temporary Possession**

- 3.1. **The ExA will ask the Applicant to briefly present and justify its case for Compulsory Acquisition (CA) and Temporary Possession (TP), including addressing the following matters:**
- **Identification of the powers sought and their purposes.**
 - **Relevant draft Development Consent Order (dDCO) provisions.**

- **How the relevant statutory and policy tests under the Planning Act 2008 (PA2008) (including s122, s123, s127, s132 and s138) and Department for Communities and Local Government guidance related to CA would be met.**
- **The Applicant's strategy/ criteria for determining whether to seek powers for CA of land, CA of rights or TP of land.**
- **Consideration of alternatives to CA/ TP.**
- **Human rights considerations.**

The ExA asked the Applicant to set out its position in relation to each of the matters listed under this agenda item.

3.1.1 The Applicant took each item in turn as follows.

Identification of the powers sought and their purposes.

3.1.2 The Applicant explained that Articles 27 and 28 of the **dDCO** [[REP3-006](#)] are the main powers authorising the acquisition of land and/or rights in the Order land.

3.1.3 Article 27 relates to the compulsory acquisition of any Order land where required for the construction and/or delivery of the Project or required to facilitate it or is incidental to those activities or required as replacement land, while Article 28 deals with the acquisition of rights and imposition of restrictive covenants allowing the Applicant to compulsorily acquire existing and new rights in the Order land, as well as imposing restrictive covenants for example where a right of access is to be created. Where the Applicant only needs to acquire rights, it is not required to acquire a greater interest in the land, and Schedule 7 of the dDCO specifies plots of land in which only new rights may be required. These are the fundamental powers within the Order.

Relevant draft Development Consent Order (dDCO) provisions.

3.1.4 The relevant provisions of the dDCO referred to by the Applicant relating to the use of compulsory acquisition powers in addition to Articles 27 and 28 and those listed on the agenda include:

- Article 31 – provides the time limit for the undertaker to exercise the compulsory acquisition powers granted by the DCO;
- Article 33 – amends provisions of the Compulsory Purchase Act 1965 to be consistent with the terms and timeframes of the DCO, as provided for by section 125 of the 2008 Act;
- Article 34 – prescribes the application of the Compulsory Purchase (Vesting Declaration) Act 1981 and modifications of the Compulsory

Purchase of Land (Vesting Declaration) (England) Regulations 2017 allowing the Applicant to choose between the notice to treat procedure or the general vesting declaration procedure;

- Article 40 – provides the process for the provision of replacement open space which is considered "special category land"; and
- Article 41 – prescribes how the compulsory acquisition and temporary possession powers granted under the DCO are to be applied to land interests held by statutory undertakers.

How the relevant statutory and policy tests under the Planning Act 2008 (PA2008) (including s122, s123, s127, s132 and s138) and Department for Communities and Local Government guidance related to CA would be met.

3.1.5 The Applicant explained that Section 6 of the **Statement of Reasons ("SoR")** [[AS-008](#)] sets out how the relevant statutory and policy tests have been met.

3.1.6 By way of context, the Applicant already owns or controls the majority of the land within the Order limits and rights in land within the Order limits required for the Project and will continue to seek to acquire all land and rights it needs by voluntary agreement. This is not the development of a new runway with the much more significant land take normally associated with proposals of that nature. Much of the land needed to deliver the Project is on-airport land (or highway already) and the extent of private land interests required is in that context not significant. The Applicant has undertaken statutory consultation and is pursuing engagement with all persons with an interest in the relevant land to try to avoid the need for compulsory acquisition. This scheme is different to many others as the reliance on compulsory acquisition to deliver the scheme is not as extensive because of the amount of the Order land already owned by the Applicant.

S122(2) PA 2008 Test

3.1.7 The Applicant explained that it considered that the s122(2) test has been met: all of the Order land is necessary to enable delivery of the Project or to facilitate it. **Appendix A** to the SoR [[AS-008](#)], which has now been superseded by the **Land Rights Tracker** [[REP3-064](#)], explains why third party land is required to deliver the scheme.

S122(3) PA 2008 Test

3.1.8 The Applicant explained that it considered that the s122(3) test has been met: there is a compelling case in the public interest for these powers to be granted. The CA Guidance similarly requires the public benefit to be weighed against the

private loss. In light of this, Section 4 of the SoR summarises the needs and benefits of the Project and the Land Rights Tracker shows the private loss. The needs and benefits are also set out in the **Needs Case** [[APP-250](#)].

- 3.1.9 The Applicant referred to the **Needs Case Technical Appendix** [[REP1-052](#)], the **Capacity and Operations Summary Paper** [[REP1-053](#)], the **Appendix: Airfield Capacity Study** [[REP1-054](#)] and the **Planning Statement** [[APP-245](#)] which supplemented the Needs Case at Deadline 1, and noted in brief summary that government policy is clear about the critical importance of aviation to the nation's economic health (see Needs Case sections 3.2-5, referring to policy including the ANPS paragraphs 1.1 and 2.1-9).
- 3.1.10 The UK aviation sector is capacity constrained. With Heathrow currently being the busiest dual runway airport in the world and Gatwick the busiest daytime single runway airport in the world, airports in London are filling up fast and will be filled by mid 2030s if the Government does not take action now. The consequences of not taking action are recognised as being damaging to the UK through a lack of opportunity for global connectivity and the impact the capacity constraints have on the quality and efficiency of the UK's airports. Policy therefore supports growth in the aviation sector (see ANPS paragraphs 2.11-14, Flightpath to the Future pp. 19,26).
- 3.1.11 At Gatwick, demand demonstrably exceeds supply – to the extent that there is a severe shortage of take-off and landing slots. Gatwick can achieve incremental growth but without the Project it will fail to meet its inherent demand and to significantly contribute to the acute lack of capacity in the South-East. The need for that capacity is already apparent and the extra capacity overdue, but is due to intensify significantly. The Project allows for best use to be made of existing runway as policy envisages (see ANPS paragraphs 1.24, 1.39-42, and more generally **The Applicant's Response to the Written Representations - Appendix A – Policy Response** [[REP3-073](#)]). Dual runway operations are forecast to be operational in 2029, in time to meet forecast demand for 2030 and well ahead of any third runway at Heathrow or the more limited capacity gain proposed for the later 2030s at Luton. It would bring a wealth of operational benefits to Gatwick and would unlock demand for growth at the airport which is already apparent. It would also serve to reinforce the role which Gatwick plays nationally and at the centre of the local economy. Overall, there is a strong need for the Project, it is supported by the Government's policy of making best use of Gatwick Airport's existing runway and will deliver substantial economic and socio-economic benefits in terms of jobs created and an increase in economic activity in the local area.

- 3.1.12 The Applicant has balanced the need for the Project against the private loss that would result if the powers were exercised. In addition to the public consultation, the Applicant has proactively sought to engage with landowners around the airport who own land that could be used for the Project to understand the type and scale of private loss that Affected Persons may suffer.
- 3.1.13 Once again, the context is that the Applicant owns the vast majority of the land over which acquisition powers are sought. However, where the Applicant has sought powers over third party land, it has assessed the private loss that could be suffered by the Affected Persons. The Applicant is not seeking to acquire any residential properties and has considered private loss to commercial operators, noting that there are a significant number of commercial operators within the airport itself.
- 3.1.14 Where the Applicant considers that it can rely on its own interests in the land it has not sought compulsory acquisition or temporary possession powers over that land. Where this is the case, this is illustrated on the **Land Plans [AS-015]**, where plots are shaded grey where the Applicant has not sought compulsory acquisition powers. The Applicant would cover other general considerations which will be relevant to compelling case test including alternatives under other agenda items, but overall the significant public benefits resulting from the Project would clearly outweigh any private losses. Further explanation of this test set out in section 6.2 of the SoR [\[AS-008\]](#).

Section 131 and section 132 Test

- 3.1.15 As the Applicant is seeking compulsory acquisition powers over existing open space land, the test in Sections 131 and 132 PA2008 must be met. Section 1 of the **SoR [AS-008]** explains how these tests have been satisfied and the reliance that has placed on the relevant exceptions. The Applicant noted that it proposes to submit a note on the approach to open space at Deadline 4 which would provide more detail including the approach to the application of the exceptions, changes to the dDCO Article 40 and the controls on the replacement open space land through the Open Space Delivery Plan (secured by Article 40) and the relevant Landscape and Ecology Management Plans (secured by DCO Requirement 8).
- 3.1.16 **[Post-hearing Note:** The Applicant has submitted the **Note on Acquisition of Special Category Land and Provision of Replacement Land** (Doc Ref. 10.30) at Deadline 4].

CA Guidance Tests

- 3.1.17 The Applicant explained that its full position is set out in Section 6 of the SoR and listed the tests set out in the CA Guidance. The Applicant briefly summarised its position on these tests, noting that more detail is within the SoR and that some of the tests would be addressed under a specific head of the agenda.
- 3.1.18 In relation to demonstrating a clear idea of intention of how land proposed to be acquired will be used, the Applicant referred to Appendix A to the SoR, as updated by the **Land Rights Tracker** which set out the particular purposes for each plot.
- 3.1.19 In relation to availability of funds for compensation, the **Funding Statement** [[APP-009](#)] sets out how the Project would be funded and demonstrates that there is a reasonable prospect of the requisite funds being available.
- 3.1.20 In relation to consideration of potential risks, the Applicant operates with sophisticated risk identification and management systems. Through internal reporting, risks which could be an impediment to the implementation of the Project have been considered and appropriate steps taken to manage those risks. As the Airport is already operational and works are frequently being carried out, the Applicant has the necessary systems and infrastructure in place to facilitate the Project. The **List of Other Consents and Licences** [[REP3-062](#)] has been updated showing that the Applicant is applying for consents early and engaging with the relevant regulators. The Applicant is not aware of any reason why they should not be forthcoming.
- 3.1.21 In relation to the operational consent, the Applicant has carried out work on the operational concept development, aerodrome design and safety case for the Project in close discussion with the Civil Aviation Authority (CAA). The Applicant is confident that there are no safety-related impediments to the Project progressing and expects this to be confirmed by the CAA directly and through a Letter of No Impediment, a draft of which has been submitted as Appendix 2 to the draft **Statement of Common Ground between Gatwick Airport Limited and the Civil Aviation Authority** [[REP3-068](#)].
- 3.1.22 In relation to seeking to acquire land by negotiation, this is detailed in paragraphs 8.1.1 to 8.1.3 of the SoR. The Applicant either has control of or has entered into voluntary agreements or documentation is in an agreed form awaiting signature/completion for 93.44% of land area over which compulsory acquisition powers are sought. The Applicant is in active negotiations with the remaining 6.56% of owners. Heads of Terms have been issued to affected landowners, within which the Applicant is offering to meet the reasonable and proper costs of

independent third-party professional advice being sought to reach a voluntary agreement. The Applicant remains optimistic that they can acquire more of the required land and rights by negotiation without the need to exercise the compulsory acquisition powers sought within the DCO.

[The Applicant's strategy/ criteria for determining whether to seek powers for CA of land, CA of rights or TP of land.](#)

- 3.1.23 Feedback received from landowners amongst other consultees in response to the two stages of statutory pre-application consultation is summarised in the **Consultation Report Appendices Part A to C** [\[APP-223\]](#) to [\[APP-244\]](#) which set out the matters raised by the consultees, along with the Applicant's response and whether it resulted in a change to the Project. Where possible, changes have been made to mitigate impacts on landowners, including a reduction in land take or rights in land and amendments to the proposed development works, including areas which are excluded from the DCO for the purpose of CA powers.
- 3.1.24 In relation to proportionality, the SoR explains that the Applicant has taken steps to ensure that all land and interests proposed to be acquired are proportionate and that it has sought to take powers of rights over land rather than compulsory acquisition in certain instances (this is shown as blue on the **Land Plans**). It has not sought to be granted powers where it would not be proportionate. For certain plots, the Applicant has sufficient certainty that the land is not required permanently and has therefore only sought powers to compulsorily acquire permanent rights and temporary possession powers. This is mainly the case for land which is required for maintenance access to highways or to carry out planting but does not need freehold ownership.

[Consideration of alternatives to CA/ TP](#)

- 3.1.25 The Applicant explained that the scheme has been developed over a number of years which has involved considering alternatives; including modifications to the scheme and alternatives to relying on the use of compulsory acquisition powers. **Environmental Statement - Chapter 3 Alternatives Considered** [\[APP-028\]](#) sets out the alternatives to the scheme that the Applicant considered in preparing the application.
- 3.1.26 In addition to the use of the northern runway, the Applicant has considered alternatives to the different elements of development including locations of runways, taxiways, holding areas, hotels, offices etc., by reference to the detailed analysis set out in the **Environmental Statement - Appendix 3.5.1 Options Appraisal Tables** [\[APP-073\]](#), supported by the figures in the **Environmental Statement - Alternatives Considered Figures** [\[APP-049\]](#). A substantial assessment of different options was carried out, where the ability to achieve land

agreements (i.e. to take land without CA) was considered as part of the overall assessment of the alternative, alongside other considerations relating to operational and business matters, as well as planning and general environmental matters. Any potential need to acquire third party land was taken into account when considering the feasibility of any alternative.

- 3.1.27 The Applicant confirmed that it has only sought CA powers where these are considered necessary to deliver the Project. It has developed the scheme with a preference of avoiding any requirement of relying on the use of CA powers unless required, which had resulted in the majority of the development being located on the airport within the Applicant's ownership or the Strategic Road Network within National Highways' freeholding.

Human rights considerations

- 3.1.28 The satisfaction of the CA Guidance tests largely also applies to the satisfaction of the tests under Articles 1 of the First Protocol and Article 8 of the European Convention on Human Rights. The Applicant confirmed that it has weighed interference with private property with the potential public benefits if development consent is granted. The interference is for a legitimate purpose and is necessary and proportionate. The compulsory acquisition powers would enable the Applicant to meet the need and policy benefits it has identified and deliver the legitimate purpose underlying the Project which is to deliver additional capacity to the UK aviation sector. This benefit can only be delivered if the DCO allows for compulsory acquisition powers and temporary use. Those affected by the exercise of compulsory acquisition or temporary use powers would be entitled to compensation and the Applicant has the resources to provide such compensation.

- 3.1.29 For these reasons, the Applicant considers that the inclusion of powers of compulsory acquisition would not involve any breach of convention rights.

3.2. The ExA will invite submissions from Affected Persons (AP) who wish to raise general matters in relation to the Applicant's case for CA and TP. However, site-specific submissions will be reserved to agenda items 4 and 5.

- 3.2.1 The JLAs provided general comments about the case made by the Applicant and raised specific questions about the powers sought over highway land.

- 3.2.2 National Highways confirmed that it has the benefit of protective provisions within the dDCO and must consent to the use of compulsory acquisition or temporary possession powers over the Strategic Road Network however it considers that

only powers of temporary possession and to acquire permanent rights should be granted.

- 3.2.3 The Applicant confirmed that the powers are needed to deliver the scheme but is eagerly seeking agreement with third party landowners.
- 3.2.4 In relation to the highway land, the Applicant explained that detailed design will determine the exact location of the works and the Applicant therefore needs to ensure that it has the power to acquire all relevant interests. The Applicant explained that full compulsory acquisition powers are required for the majority of the land to deal with any unknown rights which may prevent delivery of the scheme.
- 3.2.5 There is protection built into the dDCO for both the local highway authorities (through Article 21(3)) and National Highways (through Schedule 9). The Applicant will need the approval of the relevant highway authority in respect of the corresponding works and the Applicant is discussing private agreements with the highway authorities and progress is being made. That does not in any event, obviate the need for it to achieve clean title and allow for flexibility as design progresses.

4 **Agenda Item 4: Site-specific issues for the Applicant**

- 4.1. The ExA will ask the Applicant to provide a brief update on the progress of negotiations with APs and the timetable for their conclusion.**
- 4.2. The ExA may ask questions of the Applicant about negotiations and matters arising from written and oral submissions.**
- 4.2.1 The ExA asked the Applicant for an update on engagement with Britannia Hotels Group (BHG) and whether the Applicant is satisfied that the whole strip of land in question is required.
- 4.2.2 The Applicant explained that the strip of land in question is required to widen the road and embankment for the A23 London Road and to provide the new active travel path for pedestrians on the west side of the A23 London Road. These works will require modifications to the existing drainage, infrastructure, lighting columns etc. Once detailed design has been completed the Applicant will be able to confirm whether the BHG sign will need to be moved and the exact extent of the works taking place in that area. If needed, the Applicant would relocate the signage within the land plot following agreement with BHG.

- 4.2.3 The Applicant has proposed HoTs to BHG and has followed up multiple times but has not yet received a response. The Applicant will continue to engage with BHG.
- 4.2.4 The ExA asked for an update on discussions with Cheshire West and Chester Borough Council and asked the Applicant to explain why it is unwilling to undertake an evaluation of both sites and unwilling to relocate the EV chargers.
- 4.2.5 The Applicant confirmed that it would provide information addressing these points at Deadline 4.
- 4.2.6 **[Post-hearing note: Please see the response to Action Point 1 at **The Applicant's Response to Actions CAH1: Compulsory Acquisition** (Doc Ref. 10.26.4).]**
- 4.2.7 The ExA noted the number of plots and asked the Applicant if it had identified any issues that were unlikely to be resolved by close of examination.
- 4.2.8 The Applicant explained that it either controls the land or has entered into voluntary agreements with the land interests (or documentation is in an agreed form awaiting signature/completion) for 93.44% of the land area over which compulsory acquisition powers are sought (the Order Land).
- 4.2.9 The remaining 6.56% is made up of:
- a. Public Highways - 4.48%
 - b. Open Space Land - 0.21%
 - c. Private Land - 1.87%
- 4.2.10 For the remaining 6.56%, the Applicant is engaging with landowners with the intention of entering into voluntary agreements and has issued draft heads of terms to these landowners. The Applicant confirmed that it is in active negotiations with all landowners of Affected Land to try to agree a voluntary agreement.
- 4.2.11 The Applicant has agreed HoTs with five landowners of Affected Land to date. The Applicant remains confident that they can enter into voluntary agreements for the remaining land.
- 4.2.12 In response to submissions made by Marathon Asset Management (MAM), the ExA asked the Applicant to confirm the percentage of successful negotiations with the landowners of the 6.56%.
- 4.2.13 The Applicant confirmed that it would submit this information at Deadline 4.

- 4.2.14 **[Post-hearing note:** Please see the response to Action Point 2 at **The Applicant's Response to Actions CAH1: Compulsory Acquisition** (Doc Ref. 10.26.4).]

5 **Agenda Item 5: Site-specific representations by Affected Persons**

- 5.1. The ExA will ask APs to briefly set out any outstanding concerns in relation to CA/TP for the land in which they have an interest that have not been addressed by the Applicant.**
- 5.2. The ExA may ask questions of APs about matters arising from written and oral submissions.**
- 5.2.1 Mr E Richards explained that he had written to the Applicant a number of times but not had a response.
- 5.2.2 Gatwick Green explained that they have an agreement in principle with the Applicant but it is subject to the approval of National Highways.
- 5.2.3 The Arora Group raised concerns about the interaction of exercise of compulsory acquisition powers being sought on the operations of a number of its properties and related business operations across the Order limits.
- 5.2.4 Marathon Asset Management (MAM) confirmed that genuine progress is being made on an agreement with the Applicant and shared a number of the areas that are under discussion to inform that agreement.
- 5.2.5 National Highways noted that the Gatwick Green proposal is going through the internal process to ensure safety and confirmation will be provided as soon as reasonably practicable. It raised further comments about the powers sought over specific plots.
- 5.2.6 SCC explained the importance of the timing of the delivery of replacement public open space. The JLAs described their proposals for Horley Business Park and explained how the compulsory acquisition powers being sought would affect their proposals both in construction and operation.
- 5.2.7 The Applicant explained that it had noted the comments made by the relevant Interested Parties and would continue to progress matters with each outside of the hearings. Rather than responding to each point raised individually, therefore, the Applicant provided a summary response.

- 5.2.8 In relation to Mr Richard, the Applicant confirmed that it had now spoken to him and had established a point of contact for ongoing engagement. The correspondence had been sent to a historic email address and had therefore not been received by the Applicant.
- 5.2.9 In relation to Gatwick Green, the Applicant noted that National Highways is considering the matter and is hopeful that there will be progress on ensuring that that agreement is forthcoming.
- 5.2.10 In relation to Marathon Asset Management, the Applicant agreed that solutions to the challenges raised by MAM are in progress and is hopeful for resolution. The Applicant then provided a short response to the specific matters raised by MAM:
- The Applicant has been carrying out noise assessments at the Holiday Inn following discussions with MAM's noise consultant but noted that additional detail had been provided at the hearing so confirmed that its noise expert would contact MAM's noise expert directly to confirm the scope of the assessment.
 - The Applicant is confident that a solution can be found to ensure that Holiday Inn are provided with access throughout the construction of the Project. The Applicant has shared proposed solutions with MAM and discussions are ongoing. One option that has been proposed is very slightly outside the Order limits but could be delivered by way of an agreement over rights being granted by Holiday Inn to the Applicant. However, this is not the only potential option and the Applicant is confident that continual access can be protected through the scheme as proposed.
 - The Applicant confirmed that it has a meeting planned with the operator of the Hopper Bus to understand how any solution to the concerns expressed may be resolved.
- 5.2.11 In relation to SCC, the Applicant explained that it cannot justify providing an additional arm at the south terminal roundabout as part of the DCO scheme to be utilised by the Horley Business Park. However, it is not the intention of this project to prevent that development coming forward and the Applicant is liaising with SCC to agree a solution which avoids any severance. The Applicant is also discussing with construction sequencing with SCC and will continue to do so.
- 5.2.12 In relation to the Arora Group, the Applicant noted the following:
- Plot 1/120 is owned by AH5 Limited and the Applicant is working with Arora to address concerns about access and has issued draft Heads of Terms with commitments to protect the interests.

- Plot 4/492, 4/496, 4/539 and 4/544 related to Schlumberger House of which Arora is freeholder. The Applicant is proposing to acquire the freehold land to facilitate extension of the highway works and a temporary construction compound to facilitate those works. The Applicant has issued draft Heads of Terms including commitments to address Arora's concerns.
- Plot1/209 relate to Premier Inn and Sofitel. The works proposed in this plot are subject to detailed design and discussions with Arora are ongoing to provided adequate protection.

5.2.13 In relation to National Highways, the Applicant confirmed that it had followed Land Registry information, but that it was now in receipt of more detailed information and will update the Book of Reference accordingly. The Applicant confirmed that Plot 1/242A is required in relation to construction activities associated with Work No. 36 including enabling the scheme to undertake any potential works that may be required to a drainage outfall pipe to Gatwick Stream, the exact location and condition of which is to be confirmed at the detailed design stage with appropriate site investigations.

6 **Agenda Item 6: Sections 127 and 138 of the PA2008 - the acquisition of Statutory Undertakers' land and the extinguishment of rights and removal of apparatus of Statutory Undertakers**

6.1. The ExA will ask the Applicant for an overview of negotiations with Statutory Undertakers.

6.1.1 The Applicant explained that it had identified a total of 22 statutory undertakers affected by the scheme proposals. The Applicant provided the draft standard protective provisions to those statutory undertakers in May 2023 and invited comments on any additional protections that each statutory undertaker may consider that they need.

6.1.2 Where statutory undertakers have responded with comments or requests in relation to the standard protective provisions, active discussions are ongoing in respect of bespoke protective provisions to be included in the dDCO and, where appropriate, private side agreements.

6.1.3 The Applicant has received express confirmation from one statutory undertaker (Openreach) that the standard protective provisions are acceptable. The Applicant is confident that agreement can be reached with the other statutory

undertakers that have made representations on any required bespoke protective provisions and/or private side agreements before the end of the Examination.

6.2. The ExA will ask the Applicant to provide an update on the progress with the drafting/ agreement on Protective Provisions.

6.2.1 The Applicant explained that the statutory undertakers who have responded to correspondence and with which the Applicant is currently negotiating protective provisions / side agreements are as follows:

- a. **Environment Agency** – The EA has communicated that their standard protective provisions are currently undergoing review by their solicitors and has acknowledged the challenge this is causing for the Applicant and timescales of the Examination. They expect to provide the revised standard protective provisions to the Applicant before the end of the Examination and the Applicant is seeking to understand the scope of such provisions to prepare an alternative.
- b. **Esso Petroleum** – Bespoke protective provisions were received from Esso Petroleum on 3 April and are under review by the Applicant.
- c. **National Highways** – The latest draft of the bespoke protective provisions was sent to National Highways on 3 May 2024. Comments on the principles of the draft side agreement were sent to National Highways on 29 April 2024.
- d. **Network Rail** – The latest draft of the bespoke protective provisions was sent to Network Rail on 29 September 2023. The latest draft of the side agreement was sent to Network Rail on 29 April 2024.
- e. **Southern Gas Networks** – the latest drafts of the bespoke protective provisions and the side agreement were sent to SGN on 29 April 2024.
- f. **Thames Water** – proposed bespoke protective provisions were sent to Thames Water on 29 April 2024 to address comments previously received by Thames Water on the standard protective provisions.
- g. **UKPN** – A draft side agreement is with the Applicant for review and the Applicant is awaiting confirmation from UKPN of the extent of its assets affected by the Project.
- h. **WGPL/BPA** – the latest draft of the side agreement was sent to WGPL/BPA on 29 April 2024.

- 6.2.2 The ExA noted that in terms of ESSO, the **Land Rights Tracker** may need to be reviewed, pointing out that one of the text boxes makes reference to bespoke provisions and one says they're not.
- 6.2.3 **[Post-hearing note:** Please see the response to Action Point 3 at **The Applicant's Response to Actions CAH1: Compulsory Acquisition** (Doc Ref. 10.26.4).]
- 6.3. The ExA will ask the Applicant to confirm whether it anticipates that any additional Protective Provisions need to be included within Schedule 9 of the dDCO.**
- 6.3.1 The Applicant responded that it does not consider there to be a need to include any further protective provisions in Schedule 9 as the standard protective provisions provide adequate protection for statutory undertakers to ensure that the powers over land that have been sought by the Applicant can be used without serious detriment to the carrying on of the relevant undertaking. This notwithstanding, the Applicant is in active negotiations with a number of statutory undertakers (as set out above) and anticipates that several sets of bespoke protective provisions will be agreed and added to Schedule 9 before the end of the examination. There are also a number of side agreements being negotiated.
- 6.4. In the event that agreement is not reached with all Statutory Undertakers, whether the relevant tests for the exercise of powers pursuant to sections 127 and 138 PA2008 would be met.**
- 6.4.1 The Applicant confirmed that it considers that the tests would be met. The standard protective provisions included within the dDCO provide the appropriate level of protection to all statutory undertakers regardless of whether agreement on bespoke provisions is reached. The Applicant referred to the provisions in Schedule 9 which include a range of protections for the utility undertaker (e.g. where a public right of way is stopped up and a utility undertaker has rights or apparatus in, under, over, or on the land affected, the undertaker must ensure that the utility undertaker enjoys the same powers and rights in respect of that apparatus as they did before the right of way was stopped up; in carrying out protective works to buildings, there must not be obstruction to apparatus and access to it cannot be any less convenient; and it is not permitted to acquire any apparatus unless by agreement).
- 6.4.2 These provisions protect an undertaker who may be affected by the delivery of the Project and further details are given at CA.1.17 in **The Applicant's Response to the ExA's Written Questions (ExQ1) – Compulsory Acquisition and Temporary Possession** [[REP3-087](#)].

6.5. Any Statutory Undertaker wishing to speak in relation to an objection or issue raised that is relevant to the effects of the Proposed Development on its undertaking, apparatus or land will be invited to put oral submissions to the ExA.

6.5.1 The Applicant did not provide any response to this Agenda item.

7 Agenda Item 7: Section 135 of the Planning Act 2008 – Crown Land

7.1. The Applicant to confirm whether all Crown land has been identified in Part 4 of the Book of Reference (BoR) and on the Crown land plans given that all plots which the Crown has an interest in should be identified.

7.1.1 The Applicant confirmed that the Crown Land interests that are impacted by the proposed works are listed in the **BoR** [\[AS-010\]](#) and [\[AS-012\]](#) and are as follows:

- HM Revenue and Customs
- Secretary of State for Levelling Up, Housing and Communities
- UK Visas and Immigration
- Office for National Statistics
- Secretary of State for Transport

7.1.2 The Applicant confirmed that it is confident that it has identified all Crown Interests within the BoR.

7.2. The Applicant to provide a brief update on the progress of obtaining Crown consent.

7.2.1 The Applicant explained that introductory letters including draft s135 consent letters were sent to the relevant Crown bodies in August 2023. The Applicant has since been in regular contact with all Crown Land interests, and discussions are progressing toward s135 consent letters being signed and submitted to the examination.

7.2.2 The Crown Land interests and their agents have asked for specific details about how their land interests would be affected by the delivery of the Project which the Applicant is providing to the extent that it is currently available.

7.2.3 The Applicant is currently proposing to enter into Memorandums of Understanding ("**MoU**") with the Crown Land Interests to provide sufficient

comfort that the occupation requirements of the Crown interests will be protected through the delivery of the scheme. The completion of the MoUs is expected to provide sufficient comfort to enable the Crown Land Interests to provide s135 consent. The Applicant sees no impediment to the s135 consents being granted by the Crown Land interests in relation to the Project.

- 7.2.4 The ExA asked whether there was an update on agreement with the Home Office as they had previously raised concerns to the examination that the information provided did not reflect possible impacts on their interests.
- 7.2.5 The Applicant explained that the level of detail that the Home Office is seeking will not be available until detailed design has been carried out. However the MoU currently in discussion is expected to provide the Home Office with sufficient protections.
- 7.2.6 The ExA asked the Applicant to explain the implications for the scheme if s135 consent is not received by the close of the examination.
- 7.2.7 The Applicant explained that it expected that some form of agreement would be entered into before the decision date but confirmed it would provide further explanation in writing.
- 7.2.8 **[Post-hearing note:** Please see the response to Action Point 4 at **The Applicant's Response to Actions CAH1: Compulsory Acquisition** (Doc Ref. 10.26.3).]

8 Agenda Item 8: Category 3 Persons

8.1. The ExA will ask the Applicant to confirm whether all Category 3 persons have been identified in the BoR.

- 8.1.1 The Applicant confirmed that it will carry out another BoR refresh for Deadline 5 as requested in the **Rule 8 Letter** [\[PD-011\]](#). As confirmed to the ExA in response to CA.1.5 in The Applicant's Response to the ExA's Written Questions (ExQ1) – Compulsory Acquisition and Temporary Possession, the Applicant will send section 102A notices to any additional parties identified through this refresh.

8.2. The ExA will ask the Applicant to explain the compensations available to these persons and whether it is sufficient

- 8.2.1 The ExA asked the Applicant to explain the process of how a Category 3 person could apply for compensation, what the compensation is and whether it is considered adequate.

- 8.2.2 The Applicant responded that compensation that would be available to Category 3 persons is considered it to be adequate. To be identified as a Category 3 person, the Applicant must consider that the person may be able to make a claim under Section 10 of the Compulsory Purchase Act 1965 (compensation for the taking, or injurious affection, of land subject to compulsory purchase); Part 1 of the Land Compensation Act 1973 (compensation for depreciation of land value by physical factors caused by the use of public works); or a claim under section 152(3) of the 2008 Act. Section 152 confirms that a right of compensation to any person whose land is injuriously affected by the carrying out of the authorised works or depreciated in value by physical factors caused by the use of the works. Compensation does not depend on any land having been acquired by the use of compulsory purchase powers.
- 8.2.3 Further, the Applicant explained that it will have a construction noise insulation scheme in place in accordance with the **Environmental Statement Appendix 5.3.2: Code of Construction Practice** [[REP1-021](#)], secured by DCO Requirement 7 and an operational **Noise Insulation Scheme, Environmental Statement Appendix 14.9.10** [[APP-180](#)] in accordance with DCO Requirement 18 which will be available to the Category 3 persons if they satisfy the relevant criteria.

9 Agenda Item 9: Funding

- 9.1. The ExA will ask the Applicant to briefly summarise, and advise of any updates to, the Funding Statement since submission into the Examination.**
- 9.1.1 The Applicant confirmed that there have been no updates to the **Funding Statement** [[APP-009](#)] since submission into the Examination, however it provided further clarification in response to the ExQ1 at CA.1.19, CA.1.20, CA.1.22 and referred to **the Applicant's Response to Actions - ISH1: The Case for the Proposed Development** [[REP1-062](#)].
- 9.2. The ExA will ask the Applicant to outline how the funding is to be secured and the resource implications of both acquiring the land and implementing the project for which the land is required.**
- 9.2.1 The Applicant confirmed that the Project is proposed to be entirely privately funded. The Applicant proposes to fund the works through a blend of debt, equity and airport charges - on a similar basis to the historical funding of development works at the Airport, which includes over £2.5bn worth of works in the last decade (a figure in excess of the forecasted Project costs).

9.3. The ExA will ask the Applicant to confirm whether adequate funding is likely to be available to enable CA to proceed within the statutory period following the DCO being made.

9.3.1 The Applicant confirmed the estimated cost of the Project is £2.2 billion and the current Property Cost Estimate for acquisition of land and rights is £121m. No other bodies, whether public or private, are required to or have agreed to make financial contributions to the Project or to underwrite it at the time it applies for development consent.

9.3.2 The ExA asked the Applicant to advise how robust the estimate of £2.2bn is considering when the estimate was made. Specifically considering expected inflation and contingencies and whether the estimate was to cover all works proposed as part of the Project.

9.3.3 The Applicant explained that the estimate was put together in 2023 including the design, land acquisition (including in respect of any compulsory acquisition), any compensation payable and includes physical construction of the Project. The estimate did include a provision for inflation and has an element of risk contingency associated with that. The Applicant confirmed that the figure is robust and included the works set out in the DCO application to achieve the additional 13m worth of annual passenger throughput. This is not dissimilar to the types of costs that the Applicant has experienced over the past 10 years where it has grown the airport by 15m annual passengers and spent over £2.5bn. The estimate has been prepared based on historical analysis of its development spend at the Airport and contributions from various sources including experts and cost consultants involved in the construction of large scale infrastructure projects.

[Post-hearing note: The Applicant agreed to explain to the ExA how the Project would be funded through a blend of equity, debt and airport charges. Gatwick is a significant cash generative business. For the year ended 31st December 2023, Gatwick recorded earnings before interest, taxes, depreciation and amortisation (EBITDA) of £617m (compared to £446m) in 2022. This cash flow (equity) can be re-invested back into the business. The Applicant can also lever borrowings (debt) off the back of the value of the business which can then be paid back to investors over a long time frame. Gatwick has issued a number of publicly listed fixed rate secured bonds with legal maturities ranging from 2026 to 2051. This ensures the Applicant has access to liquidity to use for development purposes. Finally, as part of the economic licence granted by the CAA, the Applicant operates under a set of ‘commitments’ which includes a ceiling on the average level of airport charges and a minimum level of investment. Bilateral

agreements between the Applicant and individual airlines ensures that development is promoted in a cost efficient and sustainable manner.

The Applicant is therefore confident that it will have adequate funds available for the Northern Runway Project.]

9.3.4 The ExA noted that publicly available annual reports and accounts may be appended to funding statements and asked for this to be provided to the examination.

9.3.5 **[Post-hearing note:** Please see the response to Action Point 5 at **The Applicant's Response to Actions CAH1: Compulsory Acquisition** (Doc Ref. 10.26.4).]

10 **Agenda Items 10, 11, and 12: Action points arising from the Hearing, Any other business, and Close of Hearing**

10.1.1 The Applicant did not make any submissions under these agenda items.