



**Horsham  
District  
Council**



# **GATWICK AIRPORT NORTHERN RUNWAY PROJECT**

PLANNING INSPECTORATE'S REFERENCE: TR020005

## **LEGAL PARTNERSHIP AUTHORITIES**

### **ISSUE SPECIFIC HEARING 8:**

## **POST-HEARING SUBMISSION ON AGENDA ITEM 7: ECOLOGY**

**DEADLINE 6: WEDNESDAY 26 JUNE 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)

## ISSUE SPECIFIC HEARING 8 (“ISH8”)

### AGENDA ITEM 7: ECOLOGY

#### POST HEARING SUBMISSIONS INCLUDING WRITTEN SUMMARY OF THE LEGAL PARTNERSHIP AUTHORITIES’ ORAL CASE

**Note:** 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).

#### **Purpose of this Submission**

The purpose of these post-hearing submissions is to provide a written summary of the Legal Partnership Authorities’ positions on the agenda Item specified above. This includes both a summary of the Legal Partnership Authorities oral representations on this agenda item and, in some cases, further comments on the oral representations made by the Applicant at the hearing. Whilst the structure of these submissions follows the order of the agenda items, they do not include all of the Legal Partnership Authorities’ concerns in relation to each Agenda Item as not all of these positions were rehearsed orally at ISH8 due to the need to keep oral representations succinct. The Legal Partnership Authorities would also be happy to provide answers in writing to any specific further questions which the Examining Authority (“ExA”) may have.

**Attendance:** ISH8 was attended by Michael Bedford KC and Dr Lois Lane for the Legal Partnership Authorities, instructed by Emyr Thomas and Alastair Lewis of Sharpe Pritchard LLP. The hearing was attended by various other representatives from the Legal Partnership Authorities, some of whom made oral representations as identified in the post-hearing submissions below.

No.	ExA's question / Agenda Item	Summary of Oral Representations at ISH8 and Further Post-Hearing Submissions
7.1	<p>The ExA will explore outstanding concerns relating to Ecology and Biodiversity, to include:</p> <ul style="list-style-type: none"> <li>• A 'landscape-scale approach' to assessing and addressing ecological impacts;</li> <li>• Local Nature Recovery Strategies; and</li> <li>• Biodiversity Net Gain and clarifications around loss of and replacement trees and woodland.</li> </ul>	<p><b>A 'Landscape-Scale Approach' To Assessing And Addressing Ecological Impacts</b></p> <p>The concept of adopting a landscape-scale approach to assessing and addressing biodiversity impacts is crucial to maintaining habitat connectivity and wildlife corridors across not only the Site but also the surrounding landscape/habitats of the adjacent areas throughout the 14-year construction period. Furthermore, as the aviation safety requirements of the airport severely restrict the possibilities for on-site compensation and enhancement, the Authorities maintain the view that off-site compensation and enhancement is required. This is best delivered following a landscape-scale approach.</p> <p>These constraints encompass limitations on planting types, tree heights, and vegetation attractiveness to specific bird species. Understanding these limitations, it is clear that the Applicant needs to broaden their scope in considering ecological impacts and determining appropriate mitigation or compensation measures. The Authorities are concerned that the current approach lacks this broader perspective, which should extend beyond the airport perimeter to encompass the appropriate survey area for assessing landscape-scale ecological implications. It is evident to The Authorities that the Applicant's work does not sufficiently address these wider implications. Therefore, The Authorities believe that the current presentation lacks robust justification in this regard. The question remains as to what steps can be taken to address this issue satisfactorily.</p> <p>The Authorities suggest that the Applicant undertake additional desktop studies beyond the site boundaries, focusing on areas such as:</p> <ul style="list-style-type: none"> <li>• Wildlife corridors, notably the River Mole and Gatwick Stream;</li> <li>• Bat commuting routes, including routes used by Bechstein's bats between roost sites in Glover's Wood to the west of the airport and the Project Site;</li> <li>• Opportunities to enhance habitat connectivity/vegetation linkages; and</li> <li>• Considerations related to riparian watercourses and associated habitats, including the spread of non-native species, such as Himalayan balsam and signal crayfish.</li> </ul> <p>The Authorities note that informal discussions have already begun on these matters and hope that the proposed mitigation and compensation measures within the OLEMP can be strengthened, as well as influencing detailed plans under requirements 8 and 20. The Authorities hope that further investigative efforts could enhance the comprehensiveness of the OLEMP and propose that the Applicant produces a more detailed iteration that addresses these concerns more effectively.</p> <p>In response to the Applicant's suggestion at ISH8 that these matters have not been put forward in written submissions, the Authorities would signpost the Applicant to the following submissions:</p>

- West Sussex County Council updated PADSS, Item Reference 18 [REP2-067] and Item Reference 19 [REP5-115]
- Joint West Sussex Local Impact Report [REP1-068]: sections 9.5, 9.6, 9.9, 9.78, 9.79 and 9.80

Graham Roberts – county ecologist for West Sussex County Council – made the following comments on behalf of the Authorities:

1. Response to Applicant's Comments on their adoption of a landscape scale approach

- Whilst the Authorities acknowledge the Applicant may be taking a landscape-scale approach within the confines of the DCO boundary, the airport is a large area and the Applicant's approach is focussed on enhancing the wildlife corridors within the confines of the Airport.
- However, the Authorities maintain that there are numerous impacts which extend beyond the airport boundary and that there is a need to maintain habitat connectivity within the wider landscape due to the anticipated habitat severance over the 14-year construction period and associated impacts on the wider countryside around the airport.
- The Authorities note that the Applicant's environmental statement chapter 9 Section 9.9.380 (Design Year 2038) [APP-034] states: 'Due to the continued absence of mature woodland and reduction in habitat connectivity from the surface access improvement works, there would continue to be significant effects on semi-natural broadleaved woodland and the assemblage of bat species.'
- In view of the constraints at the airport, the Authorities understand there will be a net loss of 5.7 hectares of woodland, which cannot be compensated within the airport, or within the DCO boundary.
- As such, the Authorities would urge the Applicant – as set out above – to consider measures which would operate on a true landscape scale and delivers off-site compensatory habitat.

2. The need for a Landscape Enhancement Fund, in addition to the Gatwick Greenspace Partnership

- The Authorities maintain that the best way for the Applicant to achieve the required landscape scale approach would be through a specific landscape and ecological enhancement fund secured through the draft DCO Section 106 Agreement.
- The Applicant has previously maintained that their proposed contribution to the Gatwick Greenspace Partnership ("GGP") would be sufficient so as to provide the necessary mitigation.
- Whilst the GGP is an admirable initiative, the Authorities would note that it focusses on a small number of discrete sites and relies on significant community involvement.

		<ul style="list-style-type: none"> <li>• The landscape enhancement fund, by contrast, would facilitate a more conservation orientated approach across the broader countryside surrounding the airport and could enable collaboration with landowners, local authorities and other partners to enhance the landscape and mitigate any residual impacts of the development.</li> </ul> <p>The Authorities therefore wish to see the Applicant:</p> <ul style="list-style-type: none"> <li>• Carry out further assessment work in relation to the scope of what could be done off-site; and</li> <li>• Engage in discussions regarding the landscape enhancement fund so as to enable meaningful measures to be taken.</li> </ul> <p><b><u>Local Nature Recovery Strategies</u></b></p> <p>The West Sussex Local Nature Recovery Strategy (LNRS) is due to be published in draft by March 2025 and the Surrey Local Nature Recovery Strategy is due to be published in summer 2025. These strategies, and associated Local Nature Recovery Networks, will guide biodiversity initiatives, including the delivery of off-site BNG, to achieve wider strategic outcomes for biodiversity, such as expanding habitats and making them better connected.</p> <p>The Authorities would note that whilst these strategies, introduced by the Environment Act 2021, are not yet in place they will be in place by the implementation stage of the project.</p> <p>As such, the Authorities’ position is that the control documents required by the DCO should take these forthcoming strategies into account and ensure that the project is capable of being delivered in a way which takes the opportunities which are available to enhance and allow nature to recover. In terms of the mechanics of how the Applicant could contribute to the forthcoming LNRS, the Authorities would again note that the provision funding through the draft DCO section 106 agreement would clearly be helpful to the parties’ engagement on LNRSs and would allow opportunities to be explored.</p> <p><b><u>Loss of Pond Habitat</u></b></p> <p>In response to the ExA’s question regarding the creation of new ponds, the Authorities note that there will be a net loss of two ponds as a result of the development based on the Applicant’s existing proposals.</p> <p>Whilst the Authorities understand the airport constraints which may frustrate the delivery of new ponds on the airport site, the Authorities see no reason that replacement ponds could not be delivered off-site as a means of mitigation.</p>
--	--	--

		<p><b><u>Biodiversity Net Gain And Clarifications Around Loss Of And Replacement Trees And Woodland</u></b></p> <p>The Authorities believe it is essential to acknowledge from the outset that there is currently no statutory requirement for nationally significant infrastructure projects to deliver biodiversity net gain. However, the Applicant has voluntarily chosen to incorporate biodiversity net gain and has emphasised this in support of the overall planning balance. This commitment warrants scrutiny to determine whether it effectively achieves biodiversity net gain.</p> <p>It is pertinent to note that guidance on biodiversity net gain has evolved throughout the project's duration. The most recent guidance, issued earlier this year, clearly states that biodiversity net gain assessment should encompass all habitats within the Red line boundary of the development site, regardless of whether they are impacted. This current guidance contrasts with the approach adopted by the Applicant.</p> <p>The Applicant's stance is that they have agreed upon their approach with Natural England, the government's statutory nature conservation adviser. While this assertion is factual and documented in their relevant submissions as outlined in the statement of common ground, there remains a discrepancy.</p> <p>Natural England's pre-application agreement with the Applicant may reflect past policy considerations, which they now find challenging to amend due to evolving policies. However, it is crucial to emphasise that this agreement does not bind the Authorities, nor does it align with current policy perspectives.</p> <p>Upon review, the Authorities have concluded that the Applicant's approach does not align with current policy expectations. Therefore, the Authorities maintain that the Applicant should be obligated to deliver a proper 10% biodiversity net gain, accurately measured as per current guidance. This stance reflects the fundamental difference in approach between the parties concerning biodiversity net gain, notwithstanding the acknowledged loss of approximately 5.7 hectares of woodland, which remains a significant consideration in this assessment.</p> <p>In response to the Applicant's suggestion that it would be inappropriate to conduct a BNG assessment with reference to an NSIP project's red line boundary, the Authorities do not think that NSIPs should be viewed as an entirely separate category where a different approach will always be justified; especially as a project's categorisation as an NSIP, and subsequent approval process, will often be determined by simple, linear factors such as size or capacity.</p> <p><b><u>CBC Tree Replacement Contribution</u></b></p> <p>Further information is required in relation to recognition and adherence with policy CH6 'Tree Planting and Replacement Standards' of the Crawley Borough Local Plan 2015 – 2030 (CBLP).</p>
--	--	---

This policy states:

*Landscape proposals for residential development should contribute to the character and appearance of the town by including at least one new tree for each new dwelling, of an appropriate species and planted in an appropriate location.*

*Where development proposals would result in the loss of trees, applicants must identify which trees are to be removed and replaced in order to mitigate for the visual impact resulting from the loss of the tree canopies. Proposals must demonstrate that the number of replacements accords with the following requirements:*

<i>Trunk diameter of each tree (measured in cms at 1.5m above ground level) to be removed:</i>	<i>No. of replacement trees required:</i>
<i>Less than 19.9</i>	<i>1</i>
<i>20 – 29.9</i>	<i>2</i>
<i>30 – 39.9</i>	<i>3</i>
<i>40 – 49.9</i>	<i>4</i>
<i>50 – 59.9</i>	<i>5</i>
<i>60 – 69.9</i>	<i>6</i>
<i>70 – 79.9</i>	<i>7</i>
<i>80+</i>	<i>8</i>

*The girth of replacement trees will vary depending on species and location but should balance the need to reduce the likelihood of new tree stock failing to survive whilst providing visual amenity from the outset.*

*The additional and replacement tree planting requirements would normally be expected to be met within the development site. Where the local planning authority agrees that this is not feasible or desirable, commuted sums will be sought in lieu on a per tree basis, taking account of constraints to planting. The approach would enable the green character and appearance of the borough to be maintained through tree planting on appropriate and available land.*

	<p>The policy has been in force since the adoption of plan in 2015 and section 7.2 of the West Sussex Joint Local Authorities Comments on any further information / submissions received by Deadline 3 <a href="#">[REP4-042]</a> explains the approach to tree mitigation and the formula adopted for S106 agreements.</p> <p>The policy requires trees lost as a result of development to be replaced so as to sufficiently mitigate visual impacts and biodiversity loss and the number of replacement trees required depends on the size of the trees lost. Where the level of tree planting required to comply with Policy CH6 is not feasible or desirable on-site, Policy CH6 provides that a contribution will be sought in lieu on a per tree basis, with the number of replacement trees required depending on the size of the trees which are to be lost as per the tables in Policy CH6 and the Green Infrastructure SPD.</p> <p>The Applicant has acknowledged Policy CH6 within their Arboricultural Impact Assessment (AIA) (version 2) <a href="#">[REP3-037]</a>; <a href="#">[REP3-039]</a>; and <a href="#">[REP3-041]</a> and have provided a summary of how proposed tree planting <u>aims</u> to meet the policy requirements and guidance. However, there is a lack of demonstration as to how the Applicant has calculated the tree mitigation figures and if this calculation has been carried out in accordance with Policy CH6. The Authorities would wish to see a further breakdown of the calculations for each Works area demonstrated alongside each related tree survey schedule and checked against the relevant tree removal plan. It is noted that, in the submitted Outline and Arboricultural and Vegetation Method Statement <a href="#">[REP3-022 - REP3-027]</a>, the tree removal plans were not due to be supplied until Deadline 4. In view of these timescales, the Authorities cannot verify the Applicants provided figures on tree removal and presume (based on the information to date) that the number of trees to be lost has been under-estimated by the Applicant.</p> <p>It is highly unlikely given the level of flexibility sought by the Applicant (and limited detail of the Works provided) that the precise level of tree loss can be known prior to the determination of the DCO. As such, the Authorities would expect tree mitigation to be secured via a Section 106 Agreement. This approach is standard practice for all planning applications within Crawley Borough where landscape layouts are uncertain. It allows tree retention to be factored into the detailed works design, with contributions only being triggered if necessary.</p> <p>During negotiations regarding the draft dDCO Section 106 Agreement, the Authorities have proposed wording which would secure the replacement tree contribution on this basis. The Applicant has since removed this wording from the draft dDCO Section 106 Agreement and suggested they would not be open to the inclusion of an obligation to secure compliance with the policy.</p> <p>The Applicant has not demonstrated the Project is in compliance with the policy and not provided any robust argument why this established adopted policy is not applicable to this Project.</p>
--	---



		<p><b><u>Revised BNG Statement</u></b></p> <p>Following the Applicant's confirmation that a revised BNG statement will be submitted, the Authorities requested the following presentational amendments to Annex 3</p> <ul style="list-style-type: none"> <li>• Inclusion of a column for habitat lost;</li> <li>• Inclusion of a column for habitat retained;</li> <li>• Inclusion of a column for net gain/loss; and</li> <li>• Inclusion of a column for habitat creation</li> </ul>
--	--	--