



**Horsham  
District  
Council**



## **GATWICK AIRPORT NORTHERN RUNWAY PROJECT**

**PLANNING INSPECTORATE'S REFERENCE: TR020005**

### **LEGAL PARTNERSHIP AUTHORITIES**

### **LEGAL AGREEMENTS: UPDATE ON PROGRESS**

### **DEADLINE 6: 26 JUNE 2024**

Crawley Borough Council (GATW-AFP107)

Horsham District Council (20044739)

Mole Valley District Council (20044578)

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)

# UPDATE ON PROGRESS NEGOTIATING THE DRAFT DCO SECTION 106 AGREEMENT

## 1 INTRODUCTION

- 1.1 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:
- 1.1.1 Crawley Borough Council
  - 1.1.2 Horsham District Council
  - 1.1.3 Mid Sussex District Council
  - 1.1.4 West Sussex County Council
  - 1.1.5 Reigate and Banstead Borough Council
  - 1.1.6 Surrey County Council
  - 1.1.7 East Sussex County Council; and
  - 1.1.8 Tandridge District Council.
- 1.2 Please note that Mole Valley District Council are also part of the Legal Partnership Authorities for aspects of the examination relating to legal agreements entered into between the Applicant and any of the Legal Partnership Authorities. As such, this submission is also made on behalf of Mole Valley District Council.
- 1.3 This submission responds to the Examining Authority's (the "ExA") request at Deadline 6 for "progressed draft legal agreement(s) and / or an update on progress" as set out at item 25 of Annex A to the ExA's Rule 8 Letter [PD-011].
- 1.4 The Authorities understand that the Applicant is submitting an updated version of the draft DCO Section 106 Agreement at Deadline 6 alongside an explanatory memorandum.
- 1.5 The Authorities will provide comments on this updated version of the draft DCO Section 106 Agreement at Deadline 7 as they continue to progress negotiations with the Applicant.
- 1.6 This document sets out the current position of the Authorities on some of the more significant issues in the draft DCO Section 106 Agreement discussions which have not been agreed and on which the Authorities may request adjudication by the ExA. Depending on the outcome of further discussions with the Applicant, the Authorities may need to add further requests in due course

## 2 STATUS OF NEGOTIATIONS

- 2.1 The Authorities and the Applicant have been negotiating the terms of the DCO Section 106 Agreement over the course of the Examination and the Authorities received the most recent version of the Draft DCO Section 106 Agreement on 31 May 2024.
- 2.2 The Authorities reviewed the document and provided comments and, where possible, updated drafting on a thematic basis between 4 June and 17 June. The Authorities are pleased that, where the principle of obligations are agreed, the parties are making progress on the drafting and have been able to negotiate key terms. It is hoped that in respect of those obligations, details will be settled soon and the drafting can be agreed. However, the ExA should note that the financial

level of the proposed contributions in respect of these points remains subject to negotiation to ensure sufficient mitigation is achieved. By way of example, the proposed value of the London Gatwick Community Fund (Schedule 4) and the proposed contribution to the Gatwick Greenspace Partnerships (Schedule 6) remain subject to on-going discussions, along with several other contributions and funds.

- 2.3 It remains the case, however, that the Authorities and the Applicant disagree on several key obligations which the Authorities consider should be included within the DCO Section 106 Agreement.
- 2.4 The Authorities contend that the obligations in section 3 of this submission form fundamental mitigation which needs to be secured before the DCO can be considered acceptable in planning terms.
- 2.5 These obligations have been suggested to the Applicant but, whilst discussions are of course on-going, the Applicant does not currently agree that these obligations should form part of the DCO Section 106 Agreement.

### **3 FURTHER MITIGATION REQUIRED**

- 3.1 The further mitigation which the Authorities contend is required is set out under the sub-headings below alongside a brief summary of why the Authorities consider this mitigation to be of fundamental importance.
- 3.2 Further information on these mitigations has been provided in other submissions and the Authorities would be happy to answer any questions the ExA may have regarding the forms of mitigation sought.
- 3.3 As noted above, the mitigation set out below constitutes some of the more significant issues in the draft DCO Section 106 Agreement discussions which have not been agreed and on which the Authorities may request adjudication by the ExA. Depending on the outcome of further discussions with the Applicant, the Authorities may need to add further requests in due course.

#### **3.4 Air Quality**

##### **3.4.1 Obligation to fund monitoring of ultrafine particles:**

- (a) The Authorities are seeking 100% funding by the Applicant of a project to measure and monitor ultrafine particles.
- (b) The World Health Organization's latest Global Air Quality Guidelines<sup>1</sup> (2021) currently include four good practice statements on ultrafine particles which call for increased monitoring amid a growing body of epidemiological evidence regarding the health impacts of ultrafine particles, including from "forms of transportation (aviation and shipping)".
- (c) Paragraph 192 of the NPPF suggests that "opportunities to improve air quality or mitigate impacts should be identified" and it is the Authorities' view that funding the monitoring of ultrafine particles would represent such an opportunity.
- (d) The Applicant has offered a sum of up to £30,000 to fund a project to monitor ultrafine particles in the event national standards are promulgated in the UK.

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<sup>1</sup> [WHO global air quality guidelines. Particulate matter \(PM2.5 and PM10\), ozone, nitrogen dioxide \(2021\)](#) (Section 4.2)

- (e) The Authorities maintain that the Applicant has failed to assess the impact of the development on the change in exposure to ultrafine particles for the reasons set out in paragraph 11.104 of [REP1-097]. Furthermore previous monitoring has shown that local residents' exposure to ultrafine particles is already high both in terms of the WHO definition, and by comparison to a heavily polluted roadside site in London as set out in para 11.109 of [REP1-097].
- (f) Therefore, the Authorities maintain that – irrespective as to whether standards are be promulgated – it would be appropriate for the Applicant to provide 100% of the funding towards any such project carried out by Reigate and Banstead Borough Council.

3.4.2 Obligation for the Applicant to carry out a quantitative assessment of the likely odour impact of the Northern Runway Project:

- (a) The Authorities have sought an obligation for the Applicant to carry out a two-stage study to:
  - (i) determine the ambient concentration of aviation fuel at which odours are perceived on the Horley Gardens Estate, using a tracer for aviation fuel such as 1,3,5 trimethylbenzene; and
  - (ii) Subject to the concentrations determined in (i) being sufficiently high that a field based detection system can be used, to install a monitor at the RG1 site for a 1 year period to examine the distribution of odour events to understand the meteorological and operational practices that give rise to the odour issues for local residents.
- (b) The Authorities consider the Applicant's air quality assessment to have inadequately addressed the issue of odour impacts given work in 2019 indicated the airport may already be causing an odour issue as outlined in paragraph 11.122 of [REP1-097].
- (c) The Authorities therefore maintain that further work is required so that the appropriate mitigation measures can be taken.
- (d) The Applicant does not consider this obligation to be necessary.

3.4.3 Contribution to fund air quality monitoring by Crawley Borough Council:

- (a) The Authorities maintain that, due to the air quality impacts of the Applicant's development and the potential for future changes in air quality standards, it is necessary for the Applicant to provide funding towards Crawley Borough Council's air quality monitoring activities, so as to enable CBC to meet its monitoring obligations under its local air quality management framework.

3.5 **Biodiversity and Landscaping**

3.5.1 Replacement Tree Contribution to secure Crawley Borough Council's Local Plan policy CH6:

- (a) Policy CH6 is set out in the 2015 adopted [Crawley Local Plan](#) and is supplemented by Crawley Borough Council's Green Infrastructure Supplementary Planning Document. The policy requires trees lost as a result of development to be replaced in greater numbers, related to the maturity of the trees, so as to sufficiently mitigate visual impacts and biodiversity loss. Where

the level of tree planting required by a proposal is not feasible or desirable, 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. The formula for calculating a contribution can be summarised as follows:

*The number of replacement trees required to be planted based on existing trees to be removed as part of the development (as shown on the approved Landscaping Details Plan and Tree Schedule and calculated in accordance with the table set out in Policy CH6 of the Development Plan and Green Infrastructure SPD*

*less*

*the number of new trees that are to be planted as part of the Development as shown on the approved Landscaping Details Plan and Tree Schedule)*

*multiplied by £700.*

- (b) 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 will be known prior to the determination of the DCO.
- (c) Therefore, the Authorities had expected 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; allowing tree retention to be factored into the detailed works design, with contributions only being triggered if further trees need to be removed.
- (d) During negotiations regarding the draft DCO Section 106 Agreement, the Authorities have proposed wording which would secure the replacement tree contribution on this basis and this has not been agreed by the Applicant.

3.5.2 Creation of a Landscape and Ecology Enhancement Fund and funding for an officer to administer the fund:

- (a) As discussed at ISH8, the Authorities welcome the Applicant's proposed contribution to the Gatwick Greenspace Partnership but maintain that this project is geographically limited and – as currently proposed by the Applicant – substantially contingent on funding by the local authorities.
- (b) In order to deliver the landscape scale approach promised, the Authorities consider it necessary for the Applicant to establish a fund for ecological mitigation in the local area with the aim of mitigating the residual landscape and biodiversity harms, along with funding for an officer to distribute the fund.

## 3.6 **Noise**

3.5.1 Obligation for the Applicant to undertake a survey measuring community annoyance around Gatwick in line with the ANAS 2024 study three years after the commencement of dual runway operations if the government does not repeat the ANAS work in the period 2032 to 2036.

- (a) The exposure response functions (ERFs) used by the Applicant in the current noise assessment work are steady-state relationships, reflecting the relationship between current noise exposure and annoyance. They do not reflect how people

may respond if there is a change in exposure, which has led to criticism of their use in assessments dealing with airport expansion or airspace change including cost-benefit analyses such as TAG (Independent Commission on Civil Aviation Noise - Review of the Survey of Noise Attitudes 2019). The Independent Commission on Civil Aviation Noise (“ICCAN”) recommended that both before and after studies of change in aviation noise are necessary, but studies have yet to be carried out for the UK context.

- (b) The UK Government is currently undertaking a noise Survey (ANAS 2024) which will allow the ‘before’ annoyance ERF unique to Gatwick to be determined, but as yet there are no confirmed plans for further UK surveys. Given the very significant expansion which would occur were the NRP to be granted development consent, the Authorities consider it essential that the Applicant undertakes a noise survey three years after opening (in the event that no further UK surveys are planned) that would allow a unique Gatwick ERF to be determined to measure community annoyance after opening so as to validate the assumptions made in their application,
- (c) Given the length and extent of the NRP, the Authorities consider it both reasonable and necessary for the Applicant to carry out such a survey to ensure the Noise Action Plans and Noise Envelope effectively mitigates the impacts of the Development in the longer term.
- (d) The Applicant has not accepted that such measures are required and is seeking to rely solely on government surveys.

### 3.7 **Socio-economics**

3.7.1 Obligation to establish a Housing Fund to mitigate the development’s impact on housing delivery as regards affordable housing and temporary accommodation:

- (a) The Authorities’ views on housing need have been set out clearly in their LIRs (e.g. Section 15 of the Surrey LIR [REP1-097] paras 15.52-15.55, 15.70-15.75 and 15.93-15.94; Section 18 of the West Sussex LIR [REP1-068] paras 18.41-18.59 and 18.76-18.80). The Authorities have provided significant evidence on the existing lack of affordable, temporary and emergency housing and consider that the development will have a further impact due to the influx of construction workers and, in the longer term, operational staff.
- (b) Whilst the Authorities recognise it is not for the Applicant to resolve the problems of affordable housing, where additional pressure is placed on existing affordable housing needs it is reasonable and proper for those impacts to be mitigated.
- (c) The Authorities therefore consider further mitigation to be required in the form of a specific housing fund to be used to mitigate additional pressures on affordable and temporary housing.
- (d) The Applicant has not accepted that any such proposals are necessary.

### 3.8 **Surface Access**

3.8.1 At this stage, the Authorities are continuing discussions with the Applicant regarding whether the forms of mitigation which they consider are required can be included in the draft DCO Section 106 Agreement, including in respect of:

- (a) A Highway Structural Maintenance Contribution to contribute towards the increased costs in maintaining the routes identified in the Applicant's Outline Construction Traffic Management Plan (APP-085) in a good state of repair, due to damage from increased construction vehicle activity; and
- (b) Off-site parking contributions, serving different purposes, including parking controls, through Traffic Regulation Orders (TROs), monitoring and enforcement of these TROs and planning enforcement actions against unauthorised off-airport passenger parking. These are to be paid to Crawley Borough Council, Surrey County Council and West Sussex County Council in respect of different costs in relation to off-site parking as required for the Applicant to deliver Surface Access Commitment 8.

#### **4 NEXT STEPS**

- 4.1 The Authorities continue to urge the Applicant to include the above obligations within the DCO Section 106 Agreement and to commit to secure them as mitigation for the Northern Runway Project.
- 4.2 However, in the event that the Applicant refuses to agree to these terms within the DCO Section 106 Agreement, the Authorities maintain that these mitigations are of fundamental importance and will pursue these obligations through other mechanisms including:
  - 4.2.1 Articles in the DCO;
  - 4.2.2 Requirements in the DCO;
  - 4.2.3 Amendments to control documents; and/or
  - 4.2.4 Through a separate Unilateral Undertaking which the Authorities would suggest the ExA recommend the Applicant should have to sign before the DCO is made .
- 4.3 The Authorities will expand on these proposals to the ExA – including, where appropriate, through the provision of drafting – in subsequent submissions.