



**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 5: GOOD DESIGN

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 5: GOOD DESIGN

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 |
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| 5. Good Design | | |
| 5.1 | <p>The ExA will explore Good Design and outstanding concerns relating to the topic, including the following matters:</p> <ul style="list-style-type: none"> • The detail and breadth of the Design and Access Statement (DAS) [REP2-032] to [REP2-036]; • Linkage of the DAS with other documents, such as the DAS Appendix 1 Design Principles document [REP3-056], the Outline Landscape Ecology Management Plan [REP4-012], [REP4-014], [REP4-016], and the Code of Construction Practice [REP4-007]; | <p>Comments on the Applicant's overall approach to Design Control</p> <p>The ExA's questions on the detail and breadth of the Design and Access Statement ("DAS") [REP2-032] to [REP2-036] highlighted several concerns held by the Authorities regarding the Applicant's approach to design. To fully understand these concerns, the Authorities consider it necessary to take a step back from the content of the DAS and the design principles and consider how they fit into the broader control mechanism proposed by the Applicant.</p> <p>There is a clear dividing line between the Applicant and the local authorities on the approach to detailed design.</p> <p>Previously, the Applicant proposed the concept of Excepted Development, meaning that development falling into that category, particularly in relation to Requirement 4 (Detailed Design) and Requirement 10 (Surface and Foul Water Drainage) of the draft DCO, would only be subject to consultation with the local authorities and not their approval. As such, the only control would be that the Applicant's submission reflects the design principles. At Deadline 5, the Applicant revised its position, so the concept of Excepted Development is no longer a feature of the draft DCO. However, this concept remains within the draft DCO in all but name. With the exception of certain developments listed in Schedule 12 (non-highway works), all other development remains subject only to consultation and the design principles, without an approval process for the relevant local authorities.</p> <p>The Authorities remain unpersuaded that this is an appropriate approach and consider this approach lacks external scrutiny and does not adopt a holistic approach to design. Even with the modifications at Deadline 5, the Applicant seeks to exclude large parts of the development from detailed design control. The Applicant's justification for the proposed approach appears to be the belief that the freedoms and light-touch controls of permitted development rights should extend to the development authorised by the DCO. The Authorities find no legal principle or policy support for this approach in the Airport's National Policy Statement, the National Networks National Policy Statement, or other guidance. Indeed, this approach is inconsistent with the policy emphasis on achieving good design, as it compartmentalises elements of an integrated project, excluding them from detailed scrutiny.</p> |

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| <ul style="list-style-type: none"> • External and internal design review; and • The control of design matters within the draft Development Consent Order (dCO), including 'excepted' development | <p>As such, the Authorities respectfully request the Applicant to reconsider this entire approach. When examining the details of the submitted documents, the DAS is presented as illustrative, and the design principles need to provide sufficient parameters for further development.</p> <p><u>Examples of Concern</u></p> <p>The examples raised by the ExA in its questions to the Applicant mirror the Authorities' concerns.</p> <p>For example:</p> <ul style="list-style-type: none"> ○ DBF11, which applies to a multi-storey car park building, lacks specific detail; ○ DBF40 and DBF41, setting out the maximum hangar height of 32m, are also too general in their criteria; and ○ The parameters for Car Park X (Work no. 31) do not adequately address the building's relationship with the Grade II* listed building Charlwood House, or the potential impacts of a building up to 11m high. <p>The Authorities note the Applicant's comments that the Boeing hangar application was made by Boeing under Section 70 of the Town and Country Planning Act 1990, rather than the Applicant using its permitted development rights. The Authorities maintain that – for buildings of this scale – a similar level of control and scrutiny is required as would apply for a TCPA application. The fact that these buildings are included in the DCO means they do not benefit from permitted development rights, and the Authorities say that a similar level of control and scrutiny is required as would apply as if an application for planning permission were made.</p> <p>The Authorities therefore have serious concerns about the Applicant's approach and the level of detail in the design principles. The illustrative approach of the DAS is deemed inappropriate and the Authorities urge the Applicant to reconsider to ensure that the design process is holistic and subject to proper scrutiny and control.</p> <p>Response to Applicant's Oral Submissions that the Proposed Level of Design Control is Appropriate</p> <p>In response to the Applicant's oral submissions at ISH8 in which it was argued that the proposed level of design control is appropriate, the Authorities observe that it is inescapable from the Applicant's response that they are committed to the principle that permitted development rights should extend to developments not classified as permitted development. Indeed, the Applicant's response heavily relies on the scope of permitted development rights to support their position; however, this is a misapplication of the law.</p> |
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| | | <p>The Authorities observed how the Applicant suggested there was no need for legal authority or a policy position to support their approach, citing a broader principle. However, this supposed principle is essentially that permitted development rights allow certain actions as permitted development. While this is not contested, the Authorities challenge the Applicant's attempt to extend this principle to non-permitted development without any justification.</p> <p>Examining Work Number 16, which pertains to the aircraft hangar, illustrates the issue. The Applicant asserts that control is maintained through the DCO and Requirement 4, which mandates adherence to design principles. Specifically, Requirement 4 stipulates in Paragraph 41 that proposals must be consulted on with Crawley Borough Council (“CBC”). However, there is no obligation for the Applicant to modify proposals based on this consultation. Indeed, paragraph 42 only requires that any authorised development must adhere to the design principles in Appendix 1 of the Design and Access Statement unless otherwise agreed in writing by CBC. Examining the principles for Work Number 16, specifically DBF 40 and DBF 41, the guidance provided is minimal:</p> <ul style="list-style-type: none"> • DBF 40 states that the hangar should be of contemporary design, reflecting modern techniques and efficient construction methods, incorporating features such as a long span structural frame and large doors. Materials may include a steel portal frame with metal cladding, roofing, and transparent or translucent panels for natural daylighting. • DBF 41 adds that the design should consider security, safety, low energy lighting, renewable energy generation, rainwater harvesting, and good quality staff accommodation and amenities. <p>These principles are very broad and do not impose specific checks on the design's ultimate appearance or its relationship to its surroundings. As such, the Applicant’s design is not subject to any form of external scrutiny that enables the design to be rejected. The only requirements are adherence to loosely worded design principles and consultation with the local authority before proceeding. This approach does not ensure a holistic design process and lacks provenance in both legal status and policy.</p> <p>The Authorities therefore argue, by way of response to the Applicant’s oral submissions under this agenda item, that the Applicant’s approach to design control is inadequate. It does not provide a comprehensive approach to design and lacks legal and policy justification. The broad and high-level design principles fail to impose meaningful checks on the development, and the consultation process lacks enforceability. The Authorities contend that this approach is unacceptable for ensuring good design and appropriate integration of the development into its surroundings.</p> |
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| | | <p>Request for guidance from ExA</p> <p>As indicated during discussions under this agenda item at ISH8, the Authorities note that it may be beneficial to both parties, and the examination more broadly, if the ExA were able to provide guidance on which direction they would prefer the Applicant to pursue when dealing with this issue.</p> <p>Currently there is a fundamental disagreement on approach:</p> <ul style="list-style-type: none"> • The Applicant is calling for the Authorities to provide specific criticisms of particular design details so as to clarify the Authorities' concerns with the level of design control; • The Authorities currently still have broader concerns, as explained at the hearing and summarised above, regarding the adequacy, legality and policy justification for the general approach put forward by the Applicant. <p>This has resulted in a lack of engagement on the matter which is unhelpful for the ExA.</p> <p>The Authorities would therefore invite the ExA to provide an indication that either:</p> <ol style="list-style-type: none"> 1. The Applicant's general approach is sound but requires more detail; or 2. The Authorities' approach is sound and there is no justification for exempting parts of an indivisible project from detailed control on the basis that it might be permitted development in other circumstances (which it is agreed do not apply in this case). <p>If the ExA were able to clarify that the freedoms of permitted development do not apply in this context, the Authorities consider that this would enable the Applicant to be in a better position to reconsider its stance. The Authorities would also note that it is crucial to recognise that good design is central to both the National Policy Statement for Airports and the National Policy Statement for National Networks. As such, clear guidance from the ExA on which route is most likely to result in a high-quality design would greatly benefit both sides and ensure the development meets the necessary standards.</p> <p>The Authorities have provided further information on the works which they consider should be included in Schedule 12 (Non-Highway Works for which Detailed Design Approval is Required) in their <u>response to the ExA's actions from ISH8</u>.</p> |
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| | | <p>Further information on this issue is included in [REP5-117] in Appendix I “Response to the Applicant’s Deadline 4 document Note on Excepted Development and the Airport Development Principle [REP4-030]”. As explained above, whilst the words “excepted development” have been removed from the dDCO, the Authorities maintain that the principle remains and their comments therefore remain applicable.</p> <p><u>Linkage of the DAS with other documents, such as the DAS Appendix 1 Design Principles document [REP3-056], the Outline Landscape Ecology Management Plan [REP4-012], [REP4-014], [REP4-016], and the Code of Construction Practice [REP4-007]</u></p> <p>The Authorities consider that design should be integrated and holistic. Design encompasses not only aesthetics but also functionality and sustainability. The aim should be to ensure that all elements are thought through in an integrated and considered manner so that the entire project functions cohesively.</p> <p>As such, the Authorities would advocate consolidating as much information as possible into one overarching thematic document. This would allow for a comprehensive view of how all the different parts of the project integrate together. Avoiding any potential for confusion between different tasks and design approaches to different topics is entirely manageable and lies with the authors of the document and, in our view, an integrated document could clearly distinguish which principles or components pertain, for example, to temporary periods and which pertain to permanent periods.</p> <p>The Applicant's approach to the OLEMP and Requirement 7 acknowledges the need for further approval by the Local Authorities as the project moves from OLEMP to detailed landscape planning. The Authorities believe that landscaping is a critical element of design and see no fundamental difference between "soft" landscaping and "hard" built form, as distinguished by the Applicant. In the Authorities view, good design should apply equally to both.</p> <p>The Authorities therefore advocate for an integrated, holistic, and overarching approach to design, which is why they suggested consolidating the documents. However, if the preference is for separate documents for reasons of workability or manageability, this would be acceptable provided the documents work together properly and are consistent with each other.</p> <p>This integrated approach to design ensures that the whole project functions effectively and cohesively. The Authorities believe this is the best way to achieve a high-quality design for this significant development.</p> |
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| | | <p>External and internal design review</p> <p>The Authorities welcome the principle of appointing a qualified, experienced and independent design advisor to and will review the detailed CV of the Applicant’s proposed candidate at the appropriate time. However, in response to the Applicant’s comments supporting the position that the final report produced by the design review panel would only be “advisory and non-binding on GAL”, the Authorities would note that the design reviewer is already enjoined to focus on a number of aspects including adherence to the design principles as per paragraph 1.5.1 [REP5-031]. As such, both the design reviewer and the report would be aligned and there is therefore no reason the report should be non-binding as per paragraph 1.6.3 [REP5-031].</p> <p>However, there are some issues with this document that we will address fully in our response to [REP5-031] at Deadline 6. Specifically, the Authorities are concerned about the limited scope of the works that are not subject to the design adviser's task as mentioned in paragraph 1.4.1. [REP5-031] Additionally, paragraph 1.5.3 effectively excludes sustainability, which the Authorities consider integral to good design. While we understand that certain operational aspects like internal layout and phasing project requirements may not need scrutiny by the design adviser, sustainability should not be excluded as it is fundamental to good design.</p> <p>Furthermore, in paragraph 1.6.3 [REP5-031], the Authorities note that they are not content with the limited role of the design adviser. There could be mechanisms to draft the role such that the design adviser has the final say, unless there are valid operational reasons for the applicant to disagree. The Authorities acknowledge that operational independence lies with the applicant, and safety and other matters should have priority. However, the current wording is not stringent enough to ensure a good design outcome. The Authorities encourage the applicant to do more to move in the right direction to achieve a robust design outcome.</p> |
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