



**Horsham  
District  
Council**



## **GATWICK AIRPORT NORTHERN RUNWAY PROJECT**

PLANNING INSPECTORATE'S REFERENCE: TR020005

### **LEGAL PARTNERSHIP AUTHORITIES**

**RESPONSE TO "THE APPLICANT'S POSITION ON SECTION 104  
AND SECTION 105 OF THE PLANNING ACT 2008" [[REP6-095](#)]**

**DEADLINE 7: MONDAY 15 JULY 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)

## Legal Partnership Authorities

### Response to “The Applicant’s Position On Section 104 And Section 105 Of The Planning Act 2008” [\[REP6-095\]](#)

#### 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 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.

1.3 The purpose of this submission is to respond to “The Applicant’s Position on Section 104 and Section 105 of the Planning Act 2008” [\[REP6-095\]](#).

#### 2 RESPONSE TO THE APPLICANT’S POSITION ON SECTION 104 AND SECTION 105 OF THE PLANNING ACT 2008 [\[REP6-095\]](#)

2.1 The Authorities have noted the position set out by the Applicant in [REP6-095](#), giving its views on the applicability of s.104 and/or s.105 PA 2008 to the decision to be made in relation to the draft DCO. In essence, the Applicant maintains, as its primary position, that a ‘hybrid’ approach of applying s.104 PA 2008 to the highways-related parts of the project and applying s.105 PA 2008 to the airport-related parts of the project is a permissible interpretation of the statutory provisions. The Authorities are not able to agree that the ‘hybrid’ approach is a correct interpretation and consider that the Applicant has wrongly allowed the facts of the instant case to determine (or unduly colour) its approach to what it is agreed should be an objective assessment of the language used in the statutory provisions, read in their proper context. That test is agreed to be

the correct test as set out on p. 20 of the Authorities' response to ExQ1\_CS.1.27 in [\[REP3-135\]](#) and at para 1.1.11 of [\[REP6-095\]](#).

- 2.2 The Applicant's departure from that agreed test can be most clearly seen in its comments at para 3.2.2 on the assessment of the effects of this specific project. It is only by focusing on the individual 'circumstances of this case' that the Applicant is able to suggest there is an 'artificiality' in the Authorities' position. The Authorities reject the suggestion that their interpretation generates any artificiality for the reasons explained at para 4 of Appendix II to [\[REP5-094\]](#). The Authorities also observe that it is inconsistent for the Applicant to mount this argument, having acknowledged (at para 1.1.11 of [\[REP6-095\]](#)) that 'Sections 104 and 105 do not make explicit or specific provision for these circumstances'. If the circumstances were not expressly envisaged, it is unsurprising that the statutory provisions are not entirely felicitous when applied (as they must be) to those circumstances. That is not an 'artificiality' but simply a consequence of the statutory regime in its current form. It is not the job of individual decision makers to seek to 'correct' the statutory regime.
- 2.3 The Authorities consider that the Applicant is incorrect to maintain (at para 2.1.6 of [\[REP6-095\]](#)) that 'the findings in the [EFW Group](#) case remained applicable to this case' if by the use of the term 'applicable' the Applicant is intending to suggest that, as a matter of law, the decision in that case is a binding authority. The decision in the [EFW Group](#) case is not a binding authority because it was of the essence of the legal reasoning in that case that there were 'discrete' and 'free-standing parts' of the DCO application that was there being considered (as is clear from para 59 of the judgment). Mr Justice Dove was not addressing what the legal position would be if a single application did not have free-standing parts and his reasoning cannot be said to be 'applicable' to such a circumstance. It is common ground between the parties that the present application is a single indivisible whole and that its component elements are not severable (see para 1.1.10 of [\[REP6-095\]](#)). Consequently, there is no need for the Authorities' position to be 'consistent' with the findings in the [EFW Group](#) case (as the Applicant suggests at para 2.1.6 of [\[REP6-095\]](#)). The Applicant has studiously avoided any explicit acceptance of the fact that the [EFW Group](#) case is not binding in the context of the present case.
- 2.4 The Applicant also (at para 3.2.16 of [\[REP6-095\]](#)) mischaracterises the Authorities' argument as to why the application, taken as a whole, cannot be said to be 'in accordance with' the NNNPS. The Authorities do not put that proposition forward on the basis that simply because the application includes 'some' airport-related development therefore it cannot be in accordance with the NNNPS. As is clearly set out at para 10 of [REP5-094](#), it is because 'the application includes so much non-highway related development which is not development addressed by the policies in the NNNPS'. In other words, it is a fact-sensitive question of degree as to whether a proposal which includes both development addressed by the policies of a NPS and development which is

not addressed by those policies can be said, as a matter of planning judgment, to be 'in accordance with' that NPS. The Authorities have reviewed the policies of the NNNPS and are confident that, having regard to the terms of those policies and their inapplicability to large parts of what is proposed, this application (taken as an integrated and indivisible whole) is not in accordance with the NNNPS. That conclusion rests on the actual terms of the NNNPS which (as the Applicant notes at paras 3.2.3, 3.2.4, footnote 15, and 3.2.9 of REP6-095) is expressed in narrower terms than the ANPS and is to be 'read more naturally as applying to highways-related development specifically and not to other development' (para 3.2.9).

- 2.5 However, notwithstanding these disagreements, the Authorities can agree with the content of all but the first sentence of the Applicant's concluding para 4.1.4 of REP 6-095, save that the Authorities consider that its footnote 26 should be cross-referring to para 17 of REP5-094. In other words, the disagreements do not need to be resolved in order for a lawful decision to be made, and the Authorities draw attention again to the way in which the ExA and the Secretary of State dealt with an analogous issue in the Net Zero Teesside Order 2024 (upon which the Applicant has made no comments).