



**Horsham
District
Council**



GATWICK AIRPORT NORTHERN RUNWAY PROJECT

PLANNING INSPECTORATE'S REFERENCE: TR020005

LEGAL PARTNERSHIP AUTHORITIES

CAH2 – Post-Hearing Submission and Response to Actions

DEADLINE 8: WEDNESDAY 07 AUGUST 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)

Legal Partnership Authorities

Gatwick Airport Northern Runway Project (TR020005)

**LEGAL PARTNERSHIP AUTHORITIES
COMPULSORY ACQUISITION HEARING 2 (“CAH2”)**

POST-HEARING SUBMISSION 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 below. 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 CAH2 due to the need to keep oral representations succinct.

NOTE TO ExA:

Please note that this submission should be read in light of, and having regard to, the Legal Partnership Authorities’ Deadline 8 submission “Update on Negotiations Regarding the Draft DCO Section 106 Agreement” which reports the up-to-date position to the ExA that broad agreement has been reached between the Applicant and the Authorities on many of the Authorities’ outstanding concerns relating to the monitoring and mitigation of environmental impacts.

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In the unlikely event there is conflict between the Authorities' submission "Update on Negotiations Regarding the Draft DCO Section 106 Agreement" and another of the JLAs' submissions, the ExA should have regard to the update on the section 106 negotiations. When considering the below submission, the ExA should also have in mind that the Authorities maintain their position in relation to the proposal for an Environmentally Managed Growth Framework ("EMGF") ((see [\[REP4-050\]](#), [\[REP5-093\]](#) and [\[REP6-100\]](#)), or any similar measures relating to controlling growth within environmental limits.

No.	ExA's question / Agenda Item	Summary of Oral Submissions and Post-Hearing Notes
3. Section 122 and 123 of the Planning Act 2008 (PA2008) - Purpose for which compulsory acquisition may be authorised and land to which authorisation of compulsory acquisition can relate		
3.1	The ExA will ask the Applicant to provide a brief overview of any recent updates to the Land Rights Tracker	The Authorities do not have comments on this agenda item.
3.2	The ExA will invite submissions from Affected Persons (AP) in respect of whether the proposed level of compulsory acquisition of land by the Applicant is considered proportionate.	<p>Proportionality of Level of Compulsory Acquisition of Highway Land</p> <p>The Authorities welcomed the principle of what the Applicant had proposed in their response to CA2.4 [REP7-080] and the creation of a new category for compulsory acquisition and temporary possession (the “Green Land”) in which:</p> <ul style="list-style-type: none"> • There would be temporary possession to enable works on highway land; and • Compulsory acquisition would be restricted to rights only, and not to land, to enable it to create the necessary rights for statutory undertakers or utilities. <p>Whilst the Authorities consider this proposal to be a helpful way forward, the Authorities maintain that further work is needed regarding the translation of this approach to plots within the scheme.</p> <p>In response to [REP7-016], the Authorities noted that the Green Land does not currently include all of the highway land where the two local highway authorities had interests as explained by the Applicant in response to CA 2.4, where land designated as either strategic road network or local road network, vested in a highway authority or the Applicant, shall continue to be designated as highway.</p> <p>The Authorities pointed out that the Applicant is continuing to seek full compulsory acquisition power for some land currently designated as highway, which was expected to remain highway, despite possible transfers between highway authorities. The Authorities consider that this approach requires further consideration, given the involvement of three highway authorities (i.e. National Highways, Surrey County Council, and West Sussex County Council) and the fact that highway land vested in a highway authority carries with it perpetual repair and maintenance liabilities and legal duties.</p>

		<p>The Authorities noted that whilst the Applicant has proposed protective provisions for National Highways – preventing compulsory acquisition without their consent – the same has not been offered to the two local highway authorities. Furthermore, there has been no confirmed position regarding a side agreement to address these issues.</p> <p>The Authorities therefore consider that the transfers of highway land between highway authorities <u>should involve consent from both the giving and receiving authorities</u>, especially since the receiving authority would assume maintenance liabilities and statutory duties.</p> <p>This is not the case for some land currently designated as highway (the “Pink Land”) in the Applicant’s updated proposal.</p> <p>For the Pink Land, the Applicant has envisaged having compulsory acquisition powers to take land currently designated as highway, transfer it to themselves, and then vest it in another party. In the Authorities’ view, this creates an imbalance as National Highways have protective provisions, but the local highway authorities do not.</p> <p>To remedy this imbalance, the Authorities suggested either:</p> <ol style="list-style-type: none"> 1) Extending the Green Land approach to all land expected to remain highway; or 2) Providing local highway authorities with similar protective provisions as National Highways, allowing consent or veto powers over transfers. <p>The Authorities emphasised that this issue might not be the most critical in the Examination but highlighted the imbalance in the current approach. The Authorities maintain that the Applicant had not justified the differing treatment of National Highways and local highway authorities and consider the imposition on local highway authorities disproportionate. The Authorities called for further progress by the Applicant to address these concerns.</p> <p>In response to the ExA’s question as to whether (1) or (2) above would best remedy the imbalance, the Authorities explained that they believed the Green Land solution appeared to be satisfactory in principle. The Authorities’ view is that extending the Green Land solution would be the easiest approach. If there were technical reasons making this inappropriate, their default position would be to implement protective provisions.</p>
<p>3.3</p>	<p>The ExA will invite submissions from APs to briefly set out any outstanding</p>	<p>The Authorities made representations which relate primarily to Surrey County Council as landowner (“SCCaL”).</p> <p><u>Update on Bayhorne Farm and Horley Strategic Business Park</u></p>

	<p>concerns that have not already been discussed.</p>	<p>The Authorities provided some updates concerning Bayhorne Farm, the location for the proposed Horley Strategic Business Park, situated immediately north of the South Terminal roundabout. At CAH1, the Authorities expressed their concerns in detail regarding this location. The ExA is referred to the Authorities’ post-hearing submissions from CAH1: [REP4-056].</p> <p>The Authorities noted that since CAH1 there has been dialogue between the Applicant and SCCaL (and its consultant team), but the parties have not yet reached an agreement. Whilst there has been productive work on heads of terms, with some points agreed upon in principle, further work is needed to establish how these principles will apply in detail.</p> <p><u>Temporary and Permanent Access</u></p> <p>The Authorities noted that one sticking point in discussions has been the need to ensure that the temporary access required by the Applicant for its works could be constructed without prejudicing the delivery of a permanent access required for the Horley Strategic Business Park.</p> <p>On this issue, the Authorities contend that a joined-up planning approach is required to facilitate access to the allocated site particularly due to the importance of the junction on the strategic highway network. Although this junction might not remain part of the strategic road network post-project implementation, the Authorities noted that successive schemes of works would cause significant disruption to the same location and the Applicant should seek to avoid this. The Authorities have therefore advocated a solution allowing the Applicant’s temporary access to be modified into the permanent access for the allocated site. This approach would require more detail and coordination between the parties.</p> <p>Whilst the Applicant asserts that their development should not need to design access so as to “<i>cater for another development</i>”, the Authorities would emphasise that paragraph 15 of the National Planning Policy Framework makes clear that “the planning system should be genuinely plan-led”. Given the Horley Strategic Business Park is an allocated site in the adopted Reigate and Banstead Development Management Plan, the Authorities maintain that it would be in accordance with national policy for the Applicant take the allocated site’s need for permanent access into account when designing their temporary access.</p> <p>Whilst the Authorities understand that the Applicant’s approach under the WebTAG guidance – which excluded assessment of the allocated site in the modelled Core Scenario of the transport assessment due to the absence of a planning application – reassurance is required regarding the combined effects on both the strategic and local highway networks of the Applicant’s development and the allocated site development. Given the allocated status of the Horley Strategic Business Park and the complex highway design and network capacity constraints in this location, it would not be acceptable for the Applicant’s development to take, in effect, a ‘first come, first served’ approach to utilising available capacity. Further assessment is required to establish that both developments could operate</p>
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		<p>without prejudicing the strategic or local road networks. While the Applicant had provided some assessment as part of its cumulative assessment of transport impacts, the Authorities had not seen the detailed modelling and required further information to satisfy their concerns. There have been discussions regarding which of the parties need to provide information for this purpose, causing delays.</p> <p>The Authorities acknowledged the ExA’s concern about this ongoing issue and committed to communicating effectively to provide the required information. Additionally, the Authorities noted that concerns remain about the justification for the attenuation pond, its rationale, and the feasibility of alternative locations. Noting the on-going nature of discussions, the Authorities explained that they will seek to identify any issues requiring the ExA’s adjudication and are hopeful that productive work will narrow the areas of difference before the close of the examination.</p> <p><u>Post-Hearing Note:</u></p> <ul style="list-style-type: none"> • SCCaL and the Applicant have continued negotiations in relation to the points discussed at the hearing and SCCaL have received a revised offer from the Applicant. • At the time of writing, it appears unlikely that agreement will be reached in relation to the location of the attenuation pond. The Authorities consider that the location of this pond sterilises a part of the site that could lend itself to alternative uses and frustrates SCCaL’s ability to bring this part of the site forward at a later date. • Despite the Applicant’s references to an agreed position between SCCaL and the Applicant on flooding matters at CAH2, SCCaL do not consider that these matters are agreed. SCCaL would note that it appears there was no consultation on alternative locations proposed for the highway drainage as an alternative to Bayhorne Farm. Therefore, the Authorities remain of the view that the Applicant has chosen the easiest option and not considered alternatives, despite the site’s allocation for employment uses.
<p>3.4</p>	<p>The ExA may ask questions of APs about matters arising from written and oral submissions.</p>	<p>The Authorities do not have comments on this agenda item.</p>

4. 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

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<p>4.1</p>	<p>The ExA will ask the Applicant to provide a brief overview of any recent updates to the Land Rights Tracker in respect of negotiations with Statutory Undertakers.</p>	<p>The Authorities do not have comments on this agenda item.</p>
<p>4.2</p>	<p>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.</p>	<p>The Authorities do not have comments on this agenda item.</p>
<p>4.3</p>	<p>The ExA may ask questions of the Statutory Undertaker(s) or other relevant body, and the Applicant, about matters arising from written and oral submissions.</p>	<p>Protective Provisions for Local Lead Flood Authorities</p> <p>The ExA asked whether the Authorities were seeking to incorporate protective provisions for local lead flood authorities or whether they were content for the Applicant to apply for each consent during the detailed design stage of the project were the DCO to be made.</p> <p>Post-Hearing Note: Please see the Authorities' response to CAH2 Action 8 below.</p>

5. Section 135 of the PA2008 – Crown Land

<p>5.1</p>	<p>The ExA will ask the Applicant to provide a brief update on the progress of obtaining Crown consent.</p>	<p>The Authorities do not have comments on this agenda item.</p>
<p>5.2</p>	<p>The ExA may ask questions of the Applicant about matters arising from written and oral submissions.</p>	<p>The Authorities do not have comments on this agenda item.</p>
<p>Section 131 and 132 of the PA2008 – Commons, open spaces etc: compulsory acquisition of land and compulsory acquisition of rights over land.</p>		
<p>6.1</p>	<p>The ExA will ask the Applicant to briefly outline their amended approach in respect of replacement open space</p>	<p><u>Replacement Open Space</u></p> <p>The Authorities stated that the principles behind the Applicant’s amended approach to Replacement Open Space (“ROS”) are capable of addressing the Authorities concerns; however, the revised proposals will only be acceptable if the future maintenance of the replacement open space is assured indefinitely by the Applicant.</p> <p>The Authorities noted that the open space needed to continue functioning and maintaining its value as replacement open space. The Authorities noted that discussions with the Applicant suggested a time-limited commitment from the Applicant in relation to the maintenance of ROS, which the Authorities consider to be unacceptable. The Authorities stressed the need for a clear and non-time-limited commitment from the Applicant to maintain the open space provided in lieu of the space taken for the Project. In the absence of such a commitment the Authorities would not be satisfied that reliance on section 131(5)(b) PA 2008 would be justified because the public would not be assured of the longer term availability and value of the open space, and in those circumstances it could not be concluded that its formal replacement (by provision ROS under section 131(4) PA 2008) was “unnecessary”, and so neither of the</p>

		<p>requirements in section 131(3) PA 2008 would be made out. However, if a non-time-limited commitment to maintenance (i.e. in perpetuity) was secured, the Authorities would be content with the Applicant’s amended approach.</p> <p>Regarding the updated version of the draft DCO submitted at Deadline Seven, which included amended wording for Article 40, the Authorities acknowledged that the update itself was not problematic. However, they emphasised the importance of the content of the open space delivery plan and the provisions within that plan for the long-term maintenance of the open space.</p> <p>In response to a question about the length of the proposed time-limited commitment, the Authorities noted that the Applicant suggested a 30-year period. While the current LEMP reflected this period, the Authorities sought a non-time-limited commitment to ensure the open space's maintenance in the long term.</p> <p>Regarding the updated version of the draft DCO submitted at Deadline 7 – which included amended wording for Article 40 – the Authorities acknowledged that the update was not problematic. However, they emphasised the importance of the content of the open space delivery plan and the provisions within that plan for the long-term maintenance of the open space.</p>
<p>6.2</p>	<p>The ExA will invite submissions from the Joint Local Authorities and any other relevant body in respect of the amended approach</p>	<p>The Authorities do not have comments on this agenda item.</p>
<p>6.3</p>	<p>The ExA may ask questions of the Joint Local Authorities, other relevant bodies, and the Applicant about matters arising from written and oral submissions.</p>	<p>The Authorities do not have comments on this agenda item.</p>

7. Funding

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7.1	The ExA will ask the Applicant to advise of any updates to the Funding Statement.	The Authorities do not have comments on this agenda item.
7.2	The ExA will ask the Applicant to advise of any changes to the property cost estimate for the acquisition of land rights	The Authorities do not have comments on this agenda item.
7.3	The ExA will ask the Applicant for an overview of the funding arrangements for the Noise Insulation and Compensation Scheme, the Schools Insulation Scheme, and the Home Relocation Assistance Scheme. Questions in relation to the practical application of these schemes may also be asked.	<p>The Authorities did not make any substantive oral submissions relating to this agenda item.</p> <p>Post-hearing Note</p> <p>Please refer to Part C to the Legal Partnership Authorities “Consolidated Submission on the dDCO – Update at Deadline 8” for the Authorities comments on the funding arrangements and practical application of some of the schemes identified in this agenda item.</p>
7.4	The ExA may ask questions of the Applicant about matters arising from written and oral submissions.	The Authorities do not have comments on this agenda item.

8 Action Points Arising from the Hearing		
Action 1	Discussions to continue in respect of proportionate land take.	<p>The Authorities can confirm that discussion with the Applicant have continued in respect of proportionate land take. The Authorities' position remains as summarised by Counsel under agenda item 3.2 and they will continue to liaise with the Applicant in the hope of reaching an acceptable position.</p> <p>The Authorities will update the ExA further at Deadline 9 if there are significant outstanding issues necessitating the ExA's adjudication.</p>
Action 8	Respond on whether Protective Provisions for the Local Lead Flood Authorities are required in the dDCO or whether each consent will be applied for during the detailed design stage post DCO.	<p>The Authorities can confirm that protective provisions for the local lead flood authorities are not being sought and the intention would be for applications for consent to be considered at the detailed design stage. The Authorities refer the ExA to the Applicant's Deadline 3 submission "7.5 List of Other Consents and Licenses – Version 2" [REP3-063] where the Applicant has outlined one of the consents which would be required.</p>