



Horsham
District
Council



GATWICK AIRPORT NORTHERN RUNWAY PROJECT

Planning Inspectorate's Reference: TR020005

RESPONSE TO ExA's RULE 17 LETTER

[PD-030]

DEADLINE 10: TUESDAY 27 AUGUST 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 RULE 17 REQUEST FOR INFORMATION

PUBLISHED ON 20 AUGUST 2024

INTRODUCTION

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

This submission constitutes the Authorities responses to the Examining Authority’s (“ExA”) letter [\[PD-030\]](#) published on 20 August 2024, under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010, requesting further information. There were two questions requiring input from the Authorities: **R17f.3** and **R17f.7**.

The Authorities’ responses to these questions are set out at **Part A** and **Part B** to this submission.

Part C to this submission includes the Authorities’ brief comments on some of the Applicant’s Deadline 9 submissions, namely:

- The Draft development consent order [Version 11, dated August 2024];
- The Applicant’s Schedule of Changes to the draft development consent order [Version 7.0, dated August 2024]; and
- The Applicant’s Response to the ExA’s Proposed Schedule of Changes to the draft DCO [Version 1.0, dated August 2024].

Please note that – at the time of writing – the Examination Library has not yet been updated with the various Deadline 9 submissions. Therefore, this submission does not use examination library references in all instances.

Part A: Response to R17f.3

Protective Provisions:

The ExA notes the position and lack of agreement between the Applicant and Surrey County Council, as landowner, in respect of Bayhorne Farm. Please confirm whether consideration has been given to the drafting of Protective Provisions for Surrey County Council in respect of this issue.

If the use of Protective Provisions would be considered appropriate, please provide draft wording

1. Paragraph 4.7 of the Authorities' Deadline 9 Closing Position Statement ("**the Statement**") states that the Authorities "note that the ExA has issued a Rule 17 request on 20 August 2024 seeking further information on [the impact of the Proposed South Terminal Roundabout Works on the deliverability of the Horley Strategic Business Park] and the JLAs intend to provide a response to that request at Deadline 10. That response will include the JLAs' proposals for either protective provisions or an additional phasing requirement to ensure that the South Terminal Roundabout Works ... do not frustrate or preclude the delivery of the allocated employment site".
2. In fact, a response has been provided at Deadline 10 by Surrey County Council as Landowner ("**SCCaL**") which explains that SCCaL have proposed principles to the Applicant for the form and content of protective provisions and the Applicant's solicitors have confirmed they are willing to continue discussions on the same after the close of the Examination. If protective provisions are agreed these will obviously be submitted to the Planning Inspectorate and, in any event, an update will be provided by the end of the 3-month period that the ExA has for making its recommendation and report to the Secretary of State.

Part B: Response to R17f.7

London City Airport Decision

The ExA note the recovered appeal decision (APP/G5750/W/23/3326646) on the variation of conditions to allow expansion of London City Airport was published on 19 August 2024. Please provide any comments on this decision and the relevance or otherwise of it to the Proposed Development, should you wish to do so

Response to R17.f.7 on the London City Airport decision

3. On 19 August 2024, [a decision](#) was published on behalf of the Secretary of State for Housing, Communities and Local Government and the Secretary of State for Transport to accept the recommendation of two Inspectors to allow an appeal by London City Airport (“LCY”), subject to revised conditions. LCY sought permission for an increase in passenger capacity at London City Airport from 6.5 million to 9 million passengers per annum, including some additional early morning flights and the alteration of the current Saturday afternoon curfew to allow flights until 18:30 GMT during winter months and 19:30 BST during summer months.
4. In line with the recommendation of the Inspectors, the Secretaries of State granted permission for the expansion of passenger capacity and the additional early morning flights, but subject to revised conditions which would preserve the existing Saturday afternoon curfew. The Inspectors considered that the removal of the curfew would represent a material impact on local residents which could not be satisfactorily mitigated (IR, paras 14.98, 14.100) and that the economic benefits from the scheme would not be substantially undermined if the Saturday afternoon curfew remained in place, though their delivery would be slowed (IR, para 14.210). The Secretaries of State agreed, concluding that the appeal proposals without the removal of the curfew would be in line with development plan policies and national aviation policy – in particular Making Best Use of Existing Runways (“MBU”) – but that removal of the curfew would be in conflict with the development plan overall (DL, paras 18, 27-28).
5. The JLAs consider that the *direct* implications of the LCY Decision for the present Gatwick NRP application are fairly limited, in part due to considerable differences between the two airports and the nature and scale of the expansion proposed. The LCY application proposed the intensification of the use of an existing runway, in line with MBU. The present application would involve a far greater scale of expansion and the opening of an entirely new operational runway, and the primary issues under consideration are quite different from those at LCY.
6. However, the decision may have indirect implications for the assumptions underpinning the Applicant’s Need Case. The LCY Decision indicates that the current government is minded to continue with the previous government’s in-principle policy support for aviation expansion using existing runways. This is relevant to the present application because, as set out at para 35 of [REP3-123](#), GAL has based its Need Case on the assumption that no other airport capacity growth is likely to be consented and the NRP is the only consentable major expansion. While the additional capacity permitted at LCY is substantially smaller in scale, the continued support for

MBU in the Inspectors' Report and Decision Letter may have implications for the decision on the Luton DCO application, which is due on 4 October 2024.

7. Hence, the LCY Decision adds weight to the JLAs' previously expressed view that, in assessing the benefits of the NRP, lower sensitivity test forecasts that allow for growth at other airports should be used. GAL's top down forecasts and sensitivity tests [in [REP1-052](#)] would suggest that the impact of the LCY Decision to allow growth to 9 mppa would be marginal on its own but, if this decision indicates a broader precedent of approving expansion, the impact on GAL's forecasts would be more material in terms of its benefits case. At the very least, the LCY Decision suggests that the ExA should approach GAL's assumptions about capacity at other airports with caution.
8. On noise, the JLAs consider that the decision is minimally relevant due to the significant differences between the operations of the two airports and the nature of the expansion proposals under consideration. The Inspectors' Report recognised at para 14.13 that LCY was subject to a unique set of noise controls historically and as part of the CADP1 permission which LCY sought to vary. These include the weekend curfew, a ban on night flights, and the use of a noise quota count system (IR para 14.9). The key noise issue at LCY was the removal of the Saturday afternoon curfew, which has no comparison at Gatwick, or indeed any other UK airport. Conversely, because LCY has no night flights, the decision is not relevant to the JLAs' frequently expressed concerns around the treatment of the night noise effects of the present application.

Part C: Brief comments on draft development consent order [Version 11, dated August 2024]; the Applicant’s Schedule of Changes to the draft development consent order [Version 7.0, dated August 2024]; and the Applicant’s Response to the ExA’s Proposed Schedule of Changes to the draft DCO [Version 1.0, dated August 2024].

1. The Authorities have carefully considered the above documents. Owing to the fact the ExA has not requested any comments on these documents by Deadline 10, the Authorities have not prepared a detailed response to them.
2. Instead, save for the three new points which arise in the Applicant’s Schedule of Changes to the draft development consent order (and which are touched on below) the Authorities maintain their position in respect of the draft DCO as set out in their Consolidated Submissions on the draft Development Consent Order – Update at Deadline 9.
3. The three new points are –
 - a. Article 40 (special category land) – at the end of new paragraph (6) the new words “subject to any subsequent agreement pursuant to requirement 8(4)” should be omitted. The Authorities have consistently maintained that the Applicant should be responsible for the maintenance of the replacement land in perpetuity. Owing to this, the tailpiece added by the Applicant at Deadline 9 is redundant.
 - b. Article 49 (defence to proceedings in respect of statutory nuisance) – new subparagraph (1)(c) should be omitted as its effect is to reintroduce the protection from the nuisance regime for the operation of the authorised development which the ExA recommended should be removed in their Proposed Schedule of Changes to the draft DCO **[PD-028]**.
 - c. Requirement 32 (western noise mitigation bund) – after “no” omit “ground”. The reasoning states the requirement has been added “to incorporate the amendment proposed by the ExA’s Proposed Schedule of Changes to the draft DCO **[PD-028]**”. However, the ExA’s equivalent requirement (which was included in **[PD-028]** as New R2 (control of engine testing) provides “no engine testing” (and not “no ground engine testing”) should take place during the period specified in the requirement. To incorporate the ExA’s proposed amendment, “ground” should be omitted.