

# CAA response to London Luton Airport Limited's October 2019 Statutory Consultation

CAP 1896

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## Introduction

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1. The Civil Aviation Authority (CAA) welcomes the opportunity to respond to London Luton Airport Limited's (LLAL) statutory consultation on airport expansion in its capacity as a statutory consultee under planning law.
2. The CAA has a number of statutory functions which are relevant to any scheme proposing to make best use of an airport's existing runway. We are using our response to this statutory consultation on LLAL's proposed development to provide clarity and transparency on the roles and responsibilities we are performing and will continue to perform with respect to LLAL's expansion scheme.
3. Parts of LLAL's proposals for expansion will be subject to CAA regulatory processes and approval. Some of these regulatory processes may already be under way and will continue throughout and beyond the Development Consent Order (DCO) process (including after DCO consent, if granted, and during the construction phase).
4. We have engaged and will continue to engage with LLAL over the coming months to understand its proposals for expansion insofar as they relate to our relevant regulatory roles and statutory functions and thus in our capacity as a statutory consultee.
5. This response is based on the available information in LLAL's statutory consultation as at 16 December 2019 (the closing date of LLAL's statutory consultation) and the current status of our relevant policies at this date. As our work on our regulatory processes will continue after this date, this response should be considered as a "snapshot" of our position on the issues discussed as at that date and remains subject to further development in those processes.

### **The CAA's regulatory roles and statutory functions**

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6. The CAA is the UK's specialist civil aviation regulator. We work so that:
  - the aviation industry meets the highest safety standards. We regulate the safety of airport design against UK, European and international safety criteria.
  - consumers have choice, value for money, are protected and treated fairly when they fly. We apply an economic licencing regime to airports which we consider have significant market power; a category which, at present, does not include Luton Airport.

- airspace is well managed. We are required to prepare and maintain a co-ordinated strategy and plan for the use of UK airspace, including the modernisation of such airspace. We make decisions on proposals to change airspace design, which we do against the background of our duties under the Transport Act 2000, Directions and environmental guidance from the Secretary of State. and
- the aviation industry manages security risks effectively.

We also provide the Government, and third parties on a commercial basis, with environmental advice as requested, including information about the noise effects of aviation operations. In general, it is for Government to determine environmental policy and for the CAA, where required, to implement such policy as it relates to our functions.

## **The CAA's role as a statutory consultee under planning law**

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7. The CAA is prescribed as a statutory consultee in relation to applications for development consent made under the Planning Act 2008 and must be consulted on all such applications relating to an airport or which are likely to affect an airport or its current or future operation. We therefore respond to consultations and information from an applicant insofar as their application is relevant to our regulatory roles and statutory functions and we have comments to make.
8. As a statutory consultee, we are expected to provide advice and assistance to the Planning Inspectorate and Secretary of State on whether we see any impediments to LLAL's proposed development proceeding insofar as they relate to our regulatory roles and statutory functions, and, if so, whether we consider those impediments are capable of being properly managed<sup>1</sup>. We make that assessment at the time of LLAL's DCO submission. In making that assessment, we will need to decide whether there are any unmanageable impediments. Our assessment will be based on the evidence then available. The assessment we carry out and the advice and assistance we provide do not in any way fetter the CAA's decision-making discretion in relation to regulatory decisions at a later stage; all regulatory decisions will be taken based on the information available and relevant considerations at the time.

## **Structure of this response**

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9. We welcome the opportunity to respond to LLAL's Statutory Consultation. Each chapter of this response deals with a different topic for which we have a regulatory role.

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<sup>1</sup> This is likely to be in the form of a 'no impediments' and/or 'statement of common ground' document.

10. There is evidently a large volume of consultation material, much of which does not appear to be directly relevant to the CAA's regulatory roles and statutory functions. We have not reviewed all of the consultation documents published by LLAL as part of this consultation. We have focussed our attention on those areas which are within or are closely related to the CAA's areas of regulatory responsibility. Also, we have only included reference to documents where we have a comment to make.

## Chapter 1

**Aerodrome Safety**

- 1.1 The CAA is the UK regulator of civil aviation safety. UK Aerodromes that fall within the scope of the European Union Aviation Safety Agency (EASA) are currently subject to regulations set by EU/EASA. The CAA's role is to ensure that all the relevant aerodrome regulations (the EASA Basic Regulation, Implementing Rules, Acceptable Means of Compliance and Certification Specifications) are complied with by UK aerodromes in scope.
- 1.2 In Table 1.1, we set out the CAA's comments on LLAL's consultation documents with regards to safety.

Table 1.1: CAA comments concerning Aerodrome Safety

Document/Para No.	Comment
<b>PEIR Volume 1</b>	
2.5.57	The scheme intends to provide one access from the relocated fire training ground to the runway, directed towards the eastern end of the runway. It is suggested that separate accesses towards both ends of the runway could be provided, thereby minimising response times.
2.5.140-141	This paragraph discusses the potential reduction in the number of fuel tanker delivery movements to the airport owing to the provision of a hydrant fuelling system for the new Terminal 2 and connection to an existing fuel main. The reduction in the number of deliveries is questioned because the existing delivery process and capacity to Terminal 1 is unchanged. Therefore, it is suggested that there will not be an increase in delivery movements arising from the development rather than an overall decrease.
2.5.206	Any hedgerow or landscaping redevelopment on or around the airport should contain only those species not conducive to the attraction of birds or wildlife, so as to minimise the risk of bird or wildlife strike.
19.7.13	The reference to CAP 168 is incorrect. Luton is regulated against EU Regulation 137/2014 not CAP 168. The other CAPs listed are used as guidance material or to ensure acceptable means of compliance.
Chapter 19	No reference is made to existing or new rendezvous points, which are used for access to a major incident/accident by the local emergency services.

<b>Scheme Development and Construction Report</b>	
2.5.5	This paragraph refers to it not being possible to retrofit a hydrant system to the existing Terminal 1 stands. It is suggested that this could be achieved if the phasing of the introduction of new T2 stands is enough to allow phased closure of T1 stands to enable construction. It is suggested that this is explored – the retrofitting of a hydrant system to T1, if possible, would reduce the number of fuel delivery movements to the airport.
Fig.3.4 Zone 2	The European Action Plan for the Prevention of Runway Incursions (EAPPRI) V3.0 contains recommendations for aerodrome design in that new infrastructure and changes to existing infrastructure should be designed to reduce the likelihood of runway incursions. The scheme development proposal shows two new rapid exit turn-offs from the runway intersecting with existing taxiway infrastructure which have the potential to introduce a complex and possibly confusing design at both the east and west ends of the runways. This design should be fully assessed against the EAPPRI recommendations to ensure that it does not increase the likelihood of a runway incursion.

## Chapter 2

# Airspace

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- 2.1 The CAA has two separate but related roles concerning airspace. First, we must develop a strategy and plan for the use of UK airspace for air navigation up to 2040, including for the modernisation of such airspace. Our approach to this is detailed in our Airspace Modernisation Strategy (AMS). Second, the CAA makes decisions on airspace change proposals. Change sponsors are required to follow our airspace change proposal (ACP) process, which is set out in CAP 1616. Our airspace functions are carried out in such a way as to give effect to our strategy and plan subject to our statutory functions and duties.
- 2.2 In addition to airspace change, changes to air traffic control (ATC) operational practices are sometimes required to accommodate new traffic or improve efficiency. Traditionally, the CAA regulated only the safety of such practices, but in October 2018 the Secretary of State gave the CAA a function of deciding whether or not certain ATC operational practices may be implemented (after considering other factors such as noise impact, in addition to safety). Following a consultation in 2019, we are shortly to publish our decision-making process for PPRs, which will come into force on 1 February 2020.
- 2.3 In Section 2.7 of the PEIR volume 1 and the separate Explanatory Note on Airspace, LLAL indicates that it does not believe that ACPs are required for its scheme. However, the airspace design around Luton airport may still change in the future due to the wider modernisation of airspace in the south of the UK. This currently involves proposed changes to upper airspace and lower airspace at up to 16 airports, including a proposal by Luton airport's operator LLAOL.
- 2.4 Therefore, these ACPs may alter the environmental impacts of the proposal from those presented in the PEIR and subsequent Environmental Statement (ES). However, LLAL proposes that, since in its opinion these ACPs are likely to improve noise compared to existing flightpaths, a worst case for the purposes of the PEIR can be generated by assuming no change in the current airspace designs.
- 2.5 In Section 9.9 of the PEIR volume 1, we note the proposed use of a noise envelope in the DCO process which will, we understand, establish the maximum parameters within which any future changes to flight paths will have to be delivered as part of the CAP 1616 process. LLAL should ensure that the noise envelopes proposed as part of the DCO process enable LLAOL to comply with the requirements of the CAP 1616 process and do not unduly restrict scope for development of airspace options in any future ACPs or the ability to coordinate



with other airspace change sponsors as part of the UK's airspace modernisation programme.

- 2.6 LLAL have suggested that their approach will be to undertake sensitivity tests taking into account LLAOL's airspace design options in advance of the DCO examination process.
- 2.7 We suggest two minor amendments to the PEIR volume 1 and Explanatory Note on Airspace:
- In section 2.7 of the PEIR volume 1, it could be noted that the airspace change proposal for wider modernisation (FASI (S) Luton Airport (Arrivals and Departures)) ACP was submitted in December 2018 and is following the CAA's CAP1616 airspace change process.
  - In the section 3 of the Explanatory Note on Airspace, ACOG is identified as overseeing the whole of the AMS programme, whereas in fact it is only co-ordinating certain elements of it.

## Chapter 3

# Noise and carbon emissions

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## Aircraft noise

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- 3.1 The CAA has three key roles in relation to aviation noise:
- Deciding whether or not the design of airspace can be changed in accordance with UK law and noise policy. Detailed information is available on our airspace change pages.
  - Monitoring noise around UK airports and publishing information about noise levels and impact. We do this for a range of customers including the UK Government, airport operators<sup>2</sup>, airspace change proposers and local authorities.
  - Collaborating on and reviewing research into the effects of noise and how they can be reduced, and offering advice to Government on these effects.
- 3.2 The CAA does not make decisions about the amount of noise that is considered damaging or a nuisance for people, nor does it make decisions about particular plans for airports, such as expansions. Further, CAP 1616 and the Air Navigation Guidance 2017 do not place any requirement on the CAA in terms of regulating noise on the ground at airports.
- 3.3 We note that LLAL's DCO application does not require a change to the design of the airport's airspace, as it is not considered a requirement by LLAL. However, the airspace design around Luton airport may change in the future due to the modernisation of airspace in the south of the UK. This currently involves proposed changes to upper airspace and lower airspace at up to 16 airports, including a proposal by Luton airport's operator LLAOL.
- 3.4 Therefore, these future ACPs may alter the environmental impacts of the proposal from those presented in the PEIR and subsequent Environmental Statement (ES). LLAL will need to ensure the noise envelope secured through the DCO does not unduly fetter the subsequent Airspace Change Process.
- 3.5 In Table 3.1, we set out the CAA's comments on the consultation documents with regard to noise.

Table 3.1: CAA comments concerning Noise

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<sup>2</sup> Although not Luton airport's operators or owners.

Document/Para No.	Comment
<b>PEIR Volume 1</b>	
General – year of maximum environmental impact	The PEIR seems to use the year of maximum capacity as the year of maximum environmental impact without any justification. However, the year of maximum environmental impact may vary depending on the environmental topic or pollutant. Therefore, the ES should present evidence demonstrating that the correct year for maximum environmental impact has been identified.
General – comparison scenarios	<p>Greater clarity is needed on whether likely significant effects are related to the ‘do nothing’ or to the 2017 scenarios. PEIR Volume 1 indicates the assessment is relative to ‘do nothing’ in 2039, whereas the PEIR non-technical summary (para 9.3.5) refers to “Comparison of the modelled 2039 Proposed Development scenario with the 2017 (existing) scenario.” For the avoidance of doubt, likely significant effects should be reported relative to a ‘do nothing’ scenario in the same year.</p> <p>The 2017 baseline uses the actual runway modal split of 21% east/79% west, whereas the forecast scenarios use a long-term modal split of 30% east/70% west. In order to make comparison of the future scenarios against the baseline, 2017 needs to be reassessed using the long-term standard modal-split, i.e. 30/70</p>
General – noise modelling	Noise modelling – comparison with measurements. CAA is preparing guidance on noise modelling for Airspace Change sponsors. For the population exposures estimated in the PEIR, CAA would expect airports to adapt flight profiles based on local data and check noise estimates against airport noise measurement for the noise dominant aircraft types. CAA encourages this is done for the ES to ensure consistency with the subsequent Airspace Change Process and to ensure that the noise envelope reflects local operations and does not fetter the ACP.
Table 9-13	It would help to have a column indicator for the receptor type.
Tables 9-16 and 9-17	The tables use incorrect area units (km <sup>2</sup> not ha)
Tables 9-25 to 9-30	These tables need revising with the 2017 baseline using the same long-term modal split in order that the comparisons are appropriate.
<b>PEIR Volume 3</b>	
Appendix 9 3.4	<p>Magnitude of Impact for Changes in Operational Noise</p> <p>Not clear whether the noise change is relative to ‘do nothing’ or 2017</p>
Appendix 9 6.2.3	Noting that A350 modelling is not critical because there are few operations to be modelled, it is incorrect to use an A350 NPD with a A330 flight profile, and unnecessary, since flight procedure data for the A350 is now available. The ANP

	website also now includes a substitution table including future types.
Appendix 9 6.3	Tables 22 to 24, would be clearer with a total movements row added to each table.

## Carbon emissions

- 3.6 The CAA is not the aviation environmental regulator, but has a general duty to publish information on the adverse effects of aviation on the environment (CAA Act 2012, Section 84)<sup>3</sup>.
- 3.7 In Table 3.2, we set out the CAA's comments on the consultation documents with regard to carbon emissions.

Table 3.2: CAA comments regarding carbon emissions

Document/Para No.	Comment
<b>PEIR Volume 1</b>	
General	Overall, it would have been helpful had the PEIR had more detail about how LLAL will comply with the following: <ul style="list-style-type: none"> <li>- The Climate Change Act 2008 (2050 Target Amendment) Order 2019 – Paragraph 8.2.3 indicates that LLAL intend to say more about this only in the ES;</li> <li>- HMRC Technical note - Carbon Emissions Tax, 29 March 2019 – this would allow LLAL to show how it would deal with EU ETS emissions if the UK leaves the EU in January 2020;</li> <li>- Net Zero - The UK's contribution to stopping global warming, Committee on Climate Change, May 2019 – Paragraph 8.2.8 indicates that LLAL intend to say more about this only in the ES</li> </ul>
General	LLAL should outline its approach to international flight emissions not covered by CORSIA and EU ETS (if significant).
8.5.9	Consider using ICAO's rate of improvement per year
8.7.1 Table 8-13	Consider including the percentage reduction of impact expected
8.12	Consider (1) including the year of "worst case scenario" and the emissions associated with it, (2) identifying mitigation measures and % emissions expected to be mitigated (3) including assessment if impact with and without mitigation are

<sup>3</sup> See [www.caa.co.uk/environment](http://www.caa.co.uk/environment)

	significant or not
8.12.2	Consider assessing total and mitigated emissions against UK carbon budgets and target reductions by 2050, including mitigation measures

## Chapter 4

## Other aspects

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### Accessibility

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- 4.1 EU Regulation EC1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air states in the recitals that -

*In deciding on the design of new airports and terminals, and as part of major refurbishments, managing bodies of airports should, where possible, take into account the needs of disabled persons and persons with reduced mobility. Similarly, air carriers should, where possible, take such needs into account when deciding on the design of new and newly refurbished aircraft.*

As a result, it would be useful for Luton to consider the evidence that such matters have been considered.

- 4.2 Under CAA guidance document, CAP1228, UK airports with more than 150,000 passengers a year must consult with disability organisations, through setting up an advisory forum. This could include consultation with disability organisations regarding accessibility of infrastructure, including in relation to the new terminal building.

### Aviation Security

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- 4.3 In Chapter 19 of the PEIR volume 1, in relation to aviation security, it should be noted that it is important that security managers work closely with project managers and designers to ensure that the relevant threats and risks are understood and the right security outcomes are delivered through design. Guidance to airport operators is offered in the Department for Transport publication 'Aviation Security in Airport Development 2017'.

### Economic regulation

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- 4.4 Luton is subject to the obligations of the Airport Charges Regulations 2011, which we enforce and which place non-discrimination, consultation (including on

major infrastructure projects) and transparency obligations on airports serving over five million passenger a year.<sup>4</sup>

4.5 However, Luton is not subject to the more wide-ranging obligations normally associated with Airport Economic Licences.<sup>5</sup> The CAA can regulate an airport operator by means of an Airport Economic Licence, but before doing so, it must determine that the given operator meets the market power test in section 7 of the Civil Aviation Act 2012 (CAA12).<sup>6</sup>

4.6 The market power test consists of three parts, all of which must be met if the airport operator is deemed to have met the market power test:

a) that the airport operator has, or is likely to acquire, substantial market power in a market, either alone or taken with other such persons as the CAA considers appropriate;

b) that competition law does not provide sufficient protection against the risk that the airport operator may engage in conduct that results in an abuse of the substantial market power; and

c) that, for users of air transport services, the benefits of regulating the airport operator by means of a licence are likely to outweigh the adverse effects.

4.7 While we are required to keep under review the provision of airport operation services in the United Kingdom<sup>7</sup>, we are not required to make market power determinations for all UK airports or to make market power determinations at regular intervals. We may, however, make a market power determination whenever we consider it appropriate to do so, or may be required to make one in response to a request from airport operators or another person whose interests are likely to be materially affected by the determination.<sup>8</sup>

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<sup>4</sup> The Airport Charges Regulations 2011 implemented in UK law the Airport Charges Directive 2009. We have published guidance on how we shall use our powers in the Airport Charges Regulations 2011, which is also intended to help airports and airlines to comply with the regulations and inform them on how to make a complaint about alleged non-compliance. This guidance document is available at [www.caa.co.uk/CAP1343](http://www.caa.co.uk/CAP1343).

<sup>5</sup> An airport economic licence allows airport operators for which the CAA has determined that they meet the market power test to levy airport charges and can set conditions that airport operators must fulfil on a number of aspect areas such as maximum allowed prices or revenues, service quality and investment.

<sup>6</sup> We published guidance on our application of the market power test at [www.caa.co.uk/CAP1433](http://www.caa.co.uk/CAP1433).

<sup>7</sup> Under section 64 of CAA12.

<sup>8</sup> See section 7 of CAA12. In cases where we receive a request from an interested party to make a market power determination for an airport serving more than five million passengers per annum on which we have not previously made one – the case of Luton airport – we are required to make one.

- 4.8 Currently, we only economically regulate Heathrow and Gatwick airports. Stansted airport was deregulated in 2014 when we determined that this airport did not meet the market power test above.<sup>9</sup> We currently have no information that suggests Luton airport's DCO proposals would lead us to launch a market power determination process under CAA12 or an investigation under the Airport Charges Regulations 2011.
- 4.9 In addition to our economic regulation functions, the CAA also has concurrent competition powers regarding the provision of airport operation services.<sup>10</sup>

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<sup>9</sup> The 2014 Market Power Determinations in relation to Heathrow, Gatwick and Stansted airports are available at <https://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Licensing-and-price-control/Airport-market-power-assessment/>

<sup>10</sup> We have enforcement powers of competition law prohibitions on anti-competitive agreements and abuses of dominant market positions. We can also conduct market studies and refer a market for a full investigation by the Competition and Markets Authority. We have published guidance on the application of CAA's Competition Powers at [www.caa.co.uk/cap1235](http://www.caa.co.uk/cap1235).