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Chartered Town Planners

PROOF OF EVIDENCE OF ALASTAIR SKELTON

Variation of Conditions 8 (passenger throughput cap), 10 (noise contours), 22 (car parking management), 24 (travel plan) and 28 (approved plans and documents) to Planning Permission 15/00950/VARCON (dated 13 October 2017) to accommodate 19 million passengers per annum and to amend the daytime and night-time noise contours.

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REPORT DETAILS

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1. INTRODUCTION

- 1.1. I am Alastair Skelton and I am a Chartered Town Planner. I hold a Bachelor of Science (Hons) in Town Planning Studies, and a Postgraduate Diploma in Town Planning Studies.
- 1.2. I was elected as a Member of the Royal Town Planning Institute in September 1987. I have 37 years' experience in land use planning and development which was gained in both local government and private sector roles. I am a Partner with Steven Abbott Associates LLP, and independent planning consultancy with offices in Lancashire, Cumbria and Cornwall.
- 1.3. The Section 73 Application has been called in by the Secretary of State ("SOS") under powers in Section 77 of the Town and Country Planning Act 1990 ('the 1990 Act'). LADACAN has been granted 'Rule 6 status' in the proceedings
- 1.4. I was instructed on this matter on 13 July 2022 by LADACAN to act as an expert planning witness. This proof of evidence includes relevant matters on which my expert planning evidence is given, based on my instructions and the background documents provided to me. I confirm that I have made clear which facts and matters referred to in this Report are within my own knowledge and which are not. The opinions that I have expressed represent my true and complete professional opinions on matters to which they refer.
- 1.5. The purpose of my evidence is to provide an objective professional assessment of the background and key planning matters identified by the SOS. In particular, my evidence will focus on the Luton Local Plan 2011-2023 ("the LLP") and national planning policy (and related national planning practice guidance). Where appropriate I also refer to and consider other national, local and topical policy documents relevant to consideration of key issues. From review of the documents provided to me I have identified a number of key issues arising from the proposed variation of conditions ("the Section 73 Application"):
 - Conflict with the local development plan;

- Conflict with national policy and planning practice guidance
- Conflict with aspects of national aviation policy in respect of noise;
- Reliance on unspecified and unquantified social and economic benefits;
- The ineffectiveness of planning conditions and obligations to mitigate noise from aircraft movements;
- Weight afforded to climate change factors (in particular emissions);

1.6. This evidence will seek to assist the Inspectors by providing a balanced assessment in respect of these issues. A key element of my evidence will be to consider the extent to which the proposed development is consistent with the development plan for the area. There appears to be disagreement on this issue between the main parties, but the Local Planning Authority ("the LPA") was clearly of the view that the proposed development (subject to the conditions as proposed to be varied) was not consistent with the development plan for the area. I share that view, and this evidence will consider the development plan policy aspects. This evidence will also consider whether other matters (e.g. national planning policy and guidance) are material and to what extent the proposed development is consistent with them.

1.7. As the Section 73 Application seeks to vary historic planning conditions, this evidence will consider the planning history of the conditions under consideration, including the reasons for those conditions (in the context of relevant tests for planning conditions) and also historic issues around compliance with and enforcement of those conditions. National planning practice guidance on 'Flexible Options for Planning Permissions' makes clear that a permission granted under Section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. If a decision-maker is minded to grant a planning permission under Section 73 it will be important to consider whether any new or amended conditions meet all of the tests for conditions and to consider the pre-existing conditions and whether they have been effective and/or enforceable.

- 1.8. My evidence will consider various aspects of directly relevant local and national policy which require noise (and other impacts) from aviation/airport activities to be minimised and/or mitigated. In order to assist the Inspectors my evidence will also consider the content and implications of the conditions that the Section 73 Application seeks to vary, and will indicate that those conditions (or indeed conditions which are more robust and effective) are necessary to achieve the mitigation of noise (and other impacts) arising from the development as required by relevant policy. It is appropriate that the Inspectors are provided with sufficient background and historical information to ensure an understanding of how the policy requirements for mitigation have been considered in a balanced way historically. My evidence will show that the conditions in question were carefully and deliberately imposed by the LPA on the 2014 Planning Permission (and retained in the 2017 Planning Permission) in order to minimise/mitigate noise and other impacts of the development proposed. An understanding of that background is necessary and relevant to whether the proposed development with the conditions as proposed to be amended can be considered to be acceptable in the context of relevant local and national policy – a key matter identified in the Inspector's Advance Note of 24 June 2022., and which was subsequently discussed and agreed by all parties at the Pre-Inquiry Meeting (PIM) – see PIM notes.
- 1.9. LADACAN has appointed appropriately qualified and experienced technical experts to deal with the following matters:
- Noise – Seth Roberts (Hayes McKenzie)
 - Socio-economics – Alex Chapman (New Economics Foundation)
 - Climate change – Cait Hewitt (the Aviation Environmental Federation)
 - Airport Operation/Context/Background – Andrew Lambourne (LADACAN)
- 1.10. I do not produce any technical evidence, but my evidence will refer to that of others, including that produced by the Applicant as part of the application submissions.

1.11. It is noted that the Applicant's Statement of Case (paragraph 2.26.6) indicates an intention to "*bring evidence that demonstrates the social and economic benefits that would arise from increasing the number of passengers*". It may be necessary for LADACAN to respond to any new evidence produced by the Applicant. In general terms case law indicates that whilst an Environmental Statement ("ES") need not be a single document and it may include updated information the public must not be expected to engage in a 'paper chase' to effectively piece together the contents of the ES. I am aware that LADACAN and its technical experts have had considerable difficulties in trying to piece together and understand the most recent updates to the ES given their piecemeal nature and closeness to the deadline for Proofs.

1.12. My evidence is structured as follows:

1 Introduction

2 Background and Planning History

3 Planning Policy –

- The Luton Local Plan 2011-2031 ('the LLP')
- Other local/topical documents relevant to the LLP
- National Planning Policy Framework ('the Framework');
- Noise Policy Statement for England ("NPSE")
- Aviation Policy Framework ("APF")
- Flightpath to the Future ("FtF")
- Making Best Use ("MBU")
- Airports National Policy Statement ("ANPS")
- National Planning Practice Guidance;
- Noise

- Flexible Options for Planning Permissions
- Use of Planning Conditions
- Enforcement and Post-Permission Matters
- Climate Change
- Planning Obligations

4 Assessment of Key Issues Relating to Whether the Development Would be Consistent with the Development Plan and Other Relevant Policies:

- Whether the proposal accords with the LLP
- Other material planning considerations (including national policy)
- The planning balance
- Issues arising from the proposed varied conditions/tests for conditions

5 Conclusions/Summary

2. PLANNING HISTORY AND BACKGROUND

- 2.1. As these proceedings deal with the proposed variation of planning conditions, it is necessary to consider the relevant planning history and background to key matters.
- 2.2. The Inspectors will be invited to consider the effectiveness of the conditions as they are proposed to be varied in terms of mitigating noise and other impacts from the airport activities (in the context of acknowledged historic breaches of those conditions). This will require an understanding of recent history around monitoring and enforcement of the existing conditions. The past experience of the noise conditions and controls to date is helpful in considering and designing noise mitigation controls which are likely to be effective.

Planning History

12/01400/FUL (2014 Planning Permission) 23 June 2014

- 2.3. Planning permission granted for the following development:

“Full planning application for dwelling of airport way/airport approach road and associated junction improvements, extension and alterations to the terminal buildings, erection of new departures/arrivals pier and walking, erection of a pedestrian link building from the short-stay car park to the terminal, extensions and alterations to the mid-term and long-term car parks, construction of a new parallel taxiway, extensions to existing aircraft parking aprons, improvements to ancillary infrastructure including access and drainage, and demolition of existing structures and enabling works. Outline planning application for the construction of a multi-storey car park and pedestrian link building (all matters reserved).”

A copy of the decision notice for the 2014 Planning Permission is found at CD6.03.

There were two main planning conditions imposed on the 2014 Planning Permission which provided controls over the development.

- 2.4. Condition 10: Which fixed the annual throughput of commercial passengers at 18 mppa.

Condition 12: which set day-time and night-time noise contours which were not to be exceeded.

By reference to the planning officer's report to Planning Committee relating to the 2014 permission it can be seen that there is an inextricable link between conditions 10 and 12. Mr Lambourne and Mr Roberts explain how (in the context of how noise contour calculations work) passenger numbers, numbers of flights, mix of flights and fleet modernisation are all inter-related.

- 2.5. I draw attention to the following extracts from that 2014 planning officer Planning Committee Report (CD09.08): Paragraphs 74, 78, 84, 87, 96, 98, 99, 100, 110, 111, 112-116, 185, 187-190, 202-205. Of these the following paragraphs are worthy of particular mention:

- Paragraphs 99 and 100 confirmed that the most effective way of achieving certainty of passenger throughput and mitigation of adverse impacts was in the form of a limit on annual passenger numbers.
- Paragraph 110 considered a number of factors arising from the 2012 ES including the fact that controlling noise levels required that a substantial part of the airline fleet was changed to modern low noise variants. The primary mechanism (put forward by the Applicant) for ensuring that would happen was by way of condition limiting the extent of key daytime and night time aggregated noise contours.
- Paragraphs 111-113 indicated that negotiation had resulted in the applicant accepting additional controls and mitigation measures (planning conditions and Section 106 obligations) in order to ensure that the numbers of people affected by aircraft noise would not increase. It was considered that a combination of strict controls on growth (the 18 mppa cap) and with anticipated fleet modernisations would enable the noise contours to be practicable and achievable.

- Paragraph 114 made clear that great weight was to be afforded to Government policy which sought where possible to reduce the number of people significantly affected by aircraft noise.
- Paragraph 116 confirmed that the conditions and Section 106 requirements as proposed reflected both the aspirations of the APF and the Framework
- Paragraphs 203-205 summarise the conclusions and are worthy of repeating here. They acknowledge the important role that the Airport plays in terms of economic and social aspects, and offer broad support to expansion which was seen as beneficial to continued regeneration, whilst recognising the adverse impacts of that expansion on local residents. The overall conclusion was that those two aspects could be satisfactorily balanced in the decision-making process if appropriate controls and limits (on passenger numbers and noise contours were imposed.
- Para 203 – *“It has to be acknowledged that the Airport plays an important role both in the town and in the wider area in terms of the economy, not only as an employer but in respect of the associated business community that service the Airport. If the Airport is to maintain this role it is important that it continues to improve the quality of the service that it provides to enable it to meet the challenges of its immediate and long term future. This proposal will enable the Airport to improve its regional competitiveness by expanding the range of international routes that are more important to businesses who may then locate within the town or the region. This will benefit the continued regeneration of Luton and its immediate surroundings and should be supported.”*
- Para 204 – *“The Local Planning Authority acknowledge that the development/and expansion of activity at the Airport will have an impact on residents both within the borough and in the surrounding rural areas. It was recognised that a robust consideration needed to be given to the concerns raised by the interested parties and to ensure that an objective*

appraisal was carried out. This was especially important in respect of the issue of 'noise' and as such the Council engaged independent consultants Cole Jarman Ltd to evaluate the proposal, providing specialist technical expertise."

- Para 205 – *"As set out within the report, the proposed expansion of the Airport will have an impact in terms of additional noise from aircraft movements and traffic generation. However, the proposal does afford the opportunity to put in place a range of controls through the use of a mix of planning conditions and obligations contained within a S106 Agreement, in respect of issues such as night time noise, noise insulation, limitation on the passenger numbers and the type of aircraft, etc. Current controls are limited in their effectiveness and/or do not meet the requirements or objectives of current national aviation and planning policy."*

On the basis of the limits and controls that were to be secured (including those relating to noise contours and annual passenger numbers) it was recommended that planning permission be granted.

15/00950/VARCON (2017 Planning Permission) 13 October 2017

2.6. This was a Section 73 Application for the same development as the 2014 Planning Permission with a variation of Condition 11 (noise violation limits). As part of this Section 73 Application conditions 10 and 12 on the 2014 Planning Permission were renumbered 8 and 10 by the 2017 Planning Permission, but otherwise remained unamended. Throughout the rest of my evidence, I will refer to conditions 8 and 10 of the 2017 Planning Permission.

2.7. The Section 73 Application proposes to change the noise contours as follows:-

2017 Planning Permission:

- 57 dB(A) leq 16 hr (0700-2300) – not exceeding 19.4 sq km
- 48 dB(A) leq 8 hr (2300-0700) – not exceeding 37.2 sq km

By 2028:

- 57 dB(A) leq 16 hr (0700-2300) – not exceeding 15.2 sq km
- 48 dB(A) leq 8 hr (2300-0700) – not exceeding 31.6 sq km

Current Section 73 Application:

- 57 dB(A) leq 16 hr (0700-2300) – not exceeding 21.6 sq km
- 48 dB(A) leq 8 hr (2300-0700) – not exceeding 42.9 sq km

By 2028:

- 57 dB(A) leq 16 hr (0700-2300) – not exceeding 15.5 sq km
- 48 dB(A) leq 8 hr (2300-0700) – not exceeding 35.5 sq km

It can be seen, therefore, that in very basic terms the proposed variation would lead to a material increase in day and night-time noise.

- 2.8. In terms of relevant background, it is important for the Inspectors to be aware of the unusual position of Luton Borough Council as local planning authority in this case. That is because Luton Borough Council is, through its subsidiary company London Rising, the sole owner of London Luton Airport. This relationship and the tension that arises are addressed in Mr Lambourne's evidence and addressed in this proof below.
- 2.9. In this case there is a tension that arises in the planning decision making process in relation to the airport and airport expansion. The tension appears to arise from the long-standing and continuing reliance of Luton Borough Council on funds which derive directly from the Council's airport subsidiary, and which appear to rely on maintaining and increasing passenger numbers through the airport. The background to these matters is dealt with in Mr Lambourne's evidence.

3. PLANNING POLICY

The Luton Local Plan 2011–2031 (“the LLP”)

- 3.1. The LLP is the statutory Local Plan and was adopted on 7 November 2017. Decisions are to be taken in accordance with the LLP, unless material considerations indicate otherwise.
- 3.2. Strategic objective 1 is to: *“retain and enhance Luton’s important sub-regional role as a place for economic growth and opportunity including yje safeguarding of London Luton Airport’s existing operations and to support its sustainable growth over the plan period based on its strategic importance”.*
- 3.3. Review of the Statement of Case of the main parties indicates a focus on a limited number of directly relevant policies of the LLP. My evidence is also be focussed on planning policy and planning aspects, but does refer to a small number of other topical policies which I believe are of relevance.
- 3.4. It is clear that Policy LLP6 is the key policy of the LLP relevant to the proceedings. I note that paragraph 4.45 of the LLP provides supporting text to Policy LLP6 as follows:
- *“4.45. London Luton Airport is a busy, growing airport currently operating at around 10 million passengers per annum with a capacity to manage u to 12.4 mppa, and with planning consent 12/01400/FUL allowing the airport to grow to an operating capacity of 18 mppa. This is supported by Policy LLP6, which includes criteria to allow additional proposals to be considered in accordance with the most up-to-date Master Plan (i.e. that Master Plan which is applicable at the time of determining any planning application)”.*
- 3.5. For the purposes of these proceedings it is Part B of Policy LLP6 which is of most relevance – Airport Expansion which states that:

- *“Proposals for development will only be supported where the following criteria are met, where applicable/appropriate having regard to the nature and scale of such proposals:*
 - i. They are directly related to airport use of the development;*
 - ii. They contribute to achieving national aviation policies;*
 - iii. Are in accordance with an up-to-date Masterplan published by the operators of London Luton Airport and adopted by the Borough Council;*
 - iv. They fully assess the impacts of any increase in Airport Transport Movements on surrounding occupiers and/or local environment (in terms of noise, disturbance, air quality and climate change impacts), and identify appropriate forms of mitigation in the event significant adverse effects are identified;*
 - v. Achieve further noise reduction on no material increase in day or night time noise or otherwise cause excessive noise including ground noise at any time of the day or night and in accordance with the airport’s most recent Airport Noise Action Plan;*
 - vi. Include an effective noise control, monitoring and management scheme that ensures that current and future operations at the airport are fully in accordance with the policies of this Plan and any planning permission which has been granted;*
 - vii. Include proposals that will, over time, result in a significant diminution and betterment of the effects of airport operations on the amenity of local residents, occupiers and users of sensitive premises in the area, through measures to be taken to secure fleet modernisation and otherwise;*
 - viii. Incorporate sustainable transportation and surface access measures that, in particular, maximise the use of sustainable*

transport modes and seek to meet modal shift targets, all in accordance with the London Luton Airport Surface Access Strategy;

ix. Incorporate suitable road access for vehicles including any necessary improvements required as a result of the development."

3.6. For completeness, I have included at Appendix 1 an extract from the Inspector's Report into the Examination of the LLP (paragraphs 311-315) which considered Policy LLP6. The following key points are worthy of note:

- *"Policy LP6 B requires that all 9 criteria are met for any proposal relating to the expansion of the airport, its operation or any surface access improvements. All of these criteria might reasonably apply to a comprehensive scheme to significantly expand the airport and its operations."*
- *"Furthermore, planning applications stand to be determined in accordance with the development plan, unless material considerations indicate otherwise."*
- *"To be effective Criterion B iv should be amended to clarify how the effects of any proposed increase in air traffic movements will be considered, including by reference to the potential to mitigate any adverse impacts. For the same reason criteria B v should be amended to make it clear that proposals should avoid any material increase in noise."*

3.7. For reasons that I will set out later in my evidence the Section 73 Application raises conflict in terms of criteria (iv), (v), (vi), and (vii) of Policy LLP6.

3.8. Also of relevance is Policy LLP38 of the LLP which covers Pollution and Contamination. It seeks to address the national policy requirement for local plans to include policies to minimise waste and pollution. The policy covers the effects of noise as a source of pollution.

The policy requires evidence of the impacts of development (considered individually or cumulatively) to demonstrate whether any significantly adverse effects arise from development. Where adverse impacts are identified, appropriate mitigation will be required.

- 3.9. It is appropriate to address here extraneous/associated documents that are referred to in the body of Policy LLP6 and which are, therefore, material considerations in this case. Policy LLP6 criterion B (iii) refers to *“an up-to-date Airport Master Plan published by the operators of London Luton Airport and adopted by the Borough Council.”*

The latest Airport Master Plan (Master Plan 19 MPPA) is found at CD 5.55 (which also includes a report to the Overview and Scrutiny Board (“OSB”) of Luton Borough Council of 22 November 2021). That OSB report helpfully provides some context and reflections on the status of Master Plan 19MPPA, as follows:

- Paragraph 7 – *“Policy LLP6 of the Luton Local Plan states, inter alia, that proposals for development at the airport will only be supported where they accord with an up-to-date Airport Master Plan published by the airport operator and adopted by the Council. The word ‘adopt’ means in this context ‘formally approve or accept’ (as defined in the New Oxford Dictionary of English) and not in the context of Supplementary Planning Documents (SPD), as it has not gone through the formal process required for SPD under Planning Regulations, nor is it a Local Development Document (LDD). It is a material consideration for the local planning authority to take into account in the context of Policy LLP6 but should not be treated as SPD.”*
- Paragraph 10 – *“The risk of not adopting the Airport Master Plan is that the Council will not have endorsed an up to date Airport Master plan, the current Airport Master Plan now being nine years old, and therefore development proposals coming forward at the airport may not accord with policy LLP6 B (iii) of the adopted Local Plan.”*

- Paragraph 12 – *“The lack of an up-to-date Airport Master Plan may affect Planning, a statutory function of the Council, and it is therefore considered that it is appropriate to adopt the Airport Master Plan for use when considering development proposals at the site.”*

It is apparent that the latest Airport Master Plan is an operational planning document produced by the airport operator to demonstrate the operational capacity of the London Luton Airport to accommodate a throughput of 19 mppa. It is not a land use/development planning document, and it has no status as such.

- 3.10. Criterion B (v) of Policy LLP6 of the LP refers to the Airport Noise Action Plan and states that proposals will only be supported where that criterion is met: – *“achieve further noise reduction or no material increase in day or night time noise or otherwise cause excessive noise including ground noise at any time of the day or night and in accordance with the airports most recent Airport Noise Action Plan”.*
- 3.11. The most recent Airport Noise Action Plan is that produced in February 2019 (Version 1) Airport Noise Action Plan 2019-2023 – (CD13.11) That document appears to be predicated on the 2017 Planning Permission and an increased capacity of the Airport from 12 mppa to 18 mppa.
- 3.12. The document contains a section entitled “Land Use Planning and Mitigation”, within which Noise contours are set out as follows:

“LLA’s planning conditions refer to the 57dBLAeq (16 hour) as the area enclosed by this contour should not exceed 19.4 sq km for daytime noise. The planning conditions also state a limited on the area enclosed by the 48dBLAeq (2300-0700) contour, this should not exceed 37.2 sq km for night time noise.”

By 2021, LLA will develop a strategy to define methods to reduce the area of the noise contours by 2028 for day time noise to 15.2 sq km for the area exposed to 57dB (A) leq 16 hr (0700-2300) and above and for night time noise to 31.6 sq km for the area exposed to 48dB (A) leq 8 hr (2300-0700) and above.”

The proposed variations to conditions 8 and 10 of the 2017 Planning Permission sought by the Section 73 Application will not respect the day time and night time noise contours for either the period up to 2028 or the period post 2028. Under the heading 'Local Development Control' the following statement is made within the Airport Noise Action Plan:

- *"London Luton Airport works closely with local planning authorities to ensure that careful consideration is given to planning decisions in noise sensitive areas. LLACC also monitors wider development planning matters to discourage local planning authorities from permitting inappropriate development in noise sensitive areas."*

National Planning Policy and Guidance

- 3.13. National planning policy is contained in the 2021 version of the National Planning Policy Framework ("the Framework") which is CD09.05. The Framework is silent on planning for major airports. Section 6 of the Framework places significant weight on the need to support economic growth and productivity generally, taking into account local business needs and wider opportunities for development.
- 3.14. Paragraph 174 of the Framework indicates that planning decisions should contribute to and enhance the national environment by, amongst other things,:-
"e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability."
- 3.15. Paragraph 185 of the Framework goes on to indicate that planning decisions should take into account the likely effects (including cumulative effects) of various forms of pollution, including noise. The policy requires LPAs to ensure that the adverse noise impacts from new development are mitigated and reduced *"to a minimum"*. (by reference to the Noise Policy Statement for England – CD13.06)

3.16. The noise aspects of the Framework are augmented by national planning practice guidance (CD09.06)). The following aspects of PPG Noise are relevant to the current S73 Application:

- "Paragraph: 001 Reference ID: 30-001-20190722
- Paragraph: 002 Reference ID: 30-002-20190722
- Paragraph: 003 Reference ID: 30-003-20190722
- Paragraph: 064 Reference ID: 30-004-20190722
- "Paragraph 005 Reference ID: 30-005-20190722
- Paragraph: 006 Reference ID: 30-006-20190722

It is clear that decision-makers are required to consider whether or not significant adverse effect is occurring or is likely to occur, and whether there is a need to mitigate and minimise those adverse effects. The initial imposition of conditions 8 and 10 on the 2017 Planning Permission was clearly deemed necessary to provide an acceptable level of mitigation to minimise the adverse noise effects predicted to arise from the underlying development.

3.17. The Noise Policy Statement for England (NPSE)–CD13.06, was published in March 2010, and it sets out the underlying principles and aims of Government in managing noise.

3.18. The Noise Policy Aims of NPSE are:

"Through the effective management and control of environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development:

- *Avoid significant adverse impacts on health and quality of life;*
- *Mitigate and minimise adverse impacts on health and quality of life; and*

- *Where possible, contribute to the improvement of health and quality of life.”*

“Avoid significant adverse impacts on health and quality of life from environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development.” (Paragraph 2.22).

“Minimise and mitigate adverse impacts on health and quality of life from environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development.” (Paragraph 2.23).

“Where possible, contribute to the improvement of health and quality of life through the effective management and control of environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development.” (Paragraph 2.24).

- 3.19. Other relevant national (non-planning) policy documents are brought to the attention of the Inspectors.

Aviation Policy Framework (March 2013) (“APF”)– CD10.04

- 3.20. The document contains a section entitled “Land Use Planning and Mitigation”. This document sets out the Government’s primary objective of achieving long-term economic growth, and recognises the aviation sector as a major contributor to the economy. The ADF supports growth which maintains a balance between the benefits of aviation and its costs, particularly in terms of impacts on climate change and noise.
- 3.21. Capacity challenges at all of the biggest airports in the South East of England are recognised by the APF, and a key priority is to work with the aviation industry to make better use of existing runway capacity at all UK airports.
- 3.22. The overall objective on noise is set out in the APF as being *“to limit and where possible reduce the number of people in the UK significantly affected by aircraft noise.”* The APF makes clear that the acceptability of growth in aviation relies to a large extent on the industry continuing to tackle its noise impact and confirms

that the Government expects the industry at all levels to continue to address noise.

3.23. Specific policy on noise is provided at paragraphs 3.2 – 3.8 of the APF. In summary the policy seeks to strike a fair balance between the negative impacts of noise (on health, amenity, quality of life and productivity) and the positive economic impacts of flights, and that future growth of aviation should ensure benefits are shared between the aviation industry and local communities: – *“This means that the industry must continue to reduce and mitigate noise as airport capacity grows. As noise levels fall with technology improvements the aviation industry should be able to share the benefits of these improvements.”* (paragraph 33 of the APF).

3.24. The clear policy objective is set out at paragraph 3.12 of the APF as follows:

- *“The Government’s overall policy on aviation noise is **to limit and, where possible, reduce the number of people in the UK significantly affected by aircraft noise**, as part of a policy of sharing benefits of noise reduction with industry.”*

This is consistent with the Government’s policy as set out in the Noise Policy Statement for England (NPSE)– CD13.06.

Flightpath to the Future (2022) – CD11.15

3.25. Flightpath to the Future is a strategic framework focussing on providing clarity on the key priorities for the aviation section. Flightpath for the Future builds on the existing planning framework for airport growth –

- Beyond the horizon – The Future of UK Aviation: Making the best use of existing runways (2018); and
- Airports National Policy Statement.

A key strand of Flightpath to the Future is a recognition of the local air quality emissions and noise impacts on local communities.

Beyond the Horizon. The Future of UK Aviation – Making the Best Use of Existing Runways. (“MBU”) – CD8.09

This document refers to the role of local planning and is therefore of relevance as a material consideration. The following paragraphs are brought to the attention of the Inspectors: paragraphs 1.1, 1.3, 1.5, 1.9, 1.22, 1.23, 1.24, 1.26, and 1.29.

Paragraph 1.29 is key and states: ***“Therefore the government is supportive of airports beyond Heathrow making best use of their existing runways. However, we recognise that the development of airports can have negative as well as positive local impacts, including on noise levels. We therefore consider that any proposals should be judged by the relevant planning authority, taking careful account of all relevant considerations, particularly economic and environmental impacts and proposed mitigations. This policy statement does not prejudge the decision of those authorities who will be required to give proper consideration to such applications. It instead leaves it up to local rather than national government, to consider each case on its merits.”***

- 3.26. Again, it is clear that the overall policy, whilst being supportive of airports seeking to make best use of their existing runways and infrastructure, is tempered by recognition that any resulting expansion can have negative local impacts. The support is not unqualified, and it remains the case that mitigations will be required to address those local (and wider) environmental and community impacts. Currently (in theory) conditions 8 and 10 on the 2017 Planning Permission provide mitigation to limit and minimise the local community impacts, and the Section 73 Application seeks to relax and reduce those mitigations. Later in my evidence I will set out why I consider that the proposed variations to conditions 8 and 10 on the 2017 Planning Permission fail to set out a clear and deliverable strategy to deliver the noise reductions over time.

4. ASSESSMENT OF KEY ISSUES

4.1. This section of my evidence is structured broadly as follows:

- Whether the proposal accords with the LLP;
- Other material planning considerations (including national policy);
- The planning balance;
- Issues arising from the proposed varied conditions and the tests for planning conditions.

4.2. As set out at the beginning of this evidence there are a number of key aspects that arise in considering the Section 73 Application:

- Conflict with the local development plan;
- Conflict with national planning policy and guidance;
- Conflict with relevant aspects of national aviation policy in respect of noise;
- Reliance by the Applicant on unspecified and unquantified economic and social benefits;
- Due weight to be afforded to climate change factors (in particular emissions);
- Failure of the Applicant to demonstrate the acceptability of the proposed varied conditions.

4.3. However, before considering those aspects it is sensible for me to set out a number of relevant observations arising from the planning application information (including the Environmental Statement), LPA documents and reports and from the evidence of the various technical experts representing LADACAN.

- 4.4. I am aware that Mr Roberts has expressed serious reservations regarding lack of clarity and transparency in the noise assessment information provided by the Applicant. I would point out that various updates to the ES documentation submitted by the Applicant make it extremely difficult to follow in terms of referencing and understanding. An ES should be in the form of an accessible collection of relevant environmental information and should be summarised in non-technical summary language. In this particular case the succession of overlapping information is not straightforwardly structured nor easily accessible, which makes technical review by legitimately interested third parties extremely difficult.
- 4.5. The position of the LPA in respect of consistency with the LLP was set out in the officers Committee Report (CD5.08) is that the Section 73 Application is not consistent with the LLP – summarised as follows: *“The expansion of the airport to accommodate a further 19mppa is contrary to national and local policy in that noise reductions are not achieved and the adverse effects will not be mitigated for all properties prior to the impacts being experienced (based on LLAOL’s prediction of the worst year), consequently the proposal represents a departure from the development plan”.*
- 4.6. In respect of social and economic aspects, the planning application and supporting documents do not provide any specific information or evidence relating to the socio-economic benefits arising from the proposed variation to increase the passenger throughput to 19mppa. My understanding is that the Applicant seeks to rely on the socio-economic benefits information that was first submitted in 2012 for the 2014 planning permission (contained in the 2012 ES – CD6.02) – that information/evidence relates in broad terms to the socio-economic benefits predicted to arise from the underlying operational development to improve the physical and functional infrastructure of the Airport.
- 4.7. Mr Chapmans evidence is critical of the absence of any up to date and focussed evidence or information submitted in the context of the current application. There does not appear to be any new information which seeks to assess or quantify the potential economic benefits arising from the current Section 73

Application. I have not seen any information or evidence which indicates that there are materially different or greater social and economic benefits arising from the Section 73 Application to increase passenger throughput at the Airport to 19mppa. Mr Chapman deals with these matters in more detail.

4.8. There appears to be some confusion on this point between the main parties. The LPA position on the economic benefits is set out at paragraphs 7.45 – 7.49 of the LPA Statement of Case, which can be summarised as follows:

- The proposal would be unlikely of itself to significantly increase employment numbers;
- additional passengers and expenditure by them would support and sustain employment of airport and aviation related staff and the economy of the wider area;
- Safeguarding of the continued commercial viability of the airport and direct and indirect jobs, preventing the loss of jobs and consequently be likely to produce a significant economic benefit to Luton and the wider area;
- The international connectivity of the Airport provides to countries throughout Europe and further afield attracts tourism, brings in foreign investment, encourages international trade and creates employment opportunities;
- The airport stimulates economic growth both directly and indirectly, providing material benefits to local people, including those living in areas of local deprivation;
- The LPA conclude that the proposal would bring significant economic benefit and that it would be consistent with local and national policy in these terms.

4.9 The Applicant's position as set out in its Statement of Case appears to be:

- Create 900 new jobs;

- Increase the airports' GVA contribution to national GDP by around £44m per year;
- Deliver consumer benefits through cheaper airfares;
- Will support efficiency gains and the use of a more modern fleet of aircraft;
- Generate wider economic benefits for trade, investment, and tourism.

It is unclear where these assertions are evidenced and the reliance on out-of-date forecasts and assessments is questioned by Mr Chapman in his evidence. In my opinion such out-of-date and generic information about the wider economic benefits associated with the Airport can carry only very limited weight. It is evident that a greater number of people locally will be exposed to greater levels of noise as a result of the proposed varied conditions, and in my view, if this is to be justified by claimed economic and social benefits those benefits must be quantified and detailed.

Does the Section 73 Proposal accord with the LLP.

- 4.9. The LLP recognises the Airport as a major economic asset to the area and sub-region and provides a reasoned and balanced policy framework to enable the managed and sustainable growth of the Airport. To this end it is Policy LLP6 of the LLP which is central to any planning proposals to expand the Airport (physically and/or operationally). Policy LLP6 supports airport expansion and growth based on the key economic and social benefits associated with the growth of the Airport and with recognition that growth must be appropriately managed – what is described at paragraph 4.51 of the LLP as *“setting a clear environment and transport framework with which to regulate future growth.”* It can be seen, therefore, that Policy LLP6 itself seeks to balance the competing impacts that would arise from the expansion of the Airport to facilitate a passenger throughput of 18mppa – i.e. the positive economic and social benefits that were predicted to arise from the 2014 (and subsequent 2017)

Planning Permission, and the negative local and wider environmental and community impacts of that development.

- 4.10. In my view the LLP quite rightly acknowledges that the Airport is a key component of the local economy and that appropriate growth at the Airport should have policy support because of the significant economic and social benefits that would be delivered by such growth. The LLP equally acknowledges that such growth comes at a cost in terms of negative environmental and community impacts (including negative noise and climate change impacts), but concedes that such impacts can be permitted but only if they are limited in accordance with the criteria within Policy LLP6B.
- 4.11. Policy LLP6 B sets out a range of criteria against which proposals for expansion of the airport and its operations will be assessed. Policy LLP6B states that *"proposals for development will only be supported"* where relevant criteria are met.
- 4.12. Based on the application documents that I have reviewed and the officer Committee report (CD5.08) it is clear that a number of the relevant criteria are not met with the current Section 73 Application.

I believe that there is conflict with the following aspects/criteria of Policy LLP6B:

- iv) appropriate forms of mitigation in the event of significant adverse effects have not been identified;
- v) the proposal before the Inspectors does not achieve noise reduction or no material increase in day or night time noise and does not accord with the airport's most recent Airport Noise Action Plan;
- vi) Mr Lambourne and Mr Roberts explain the flaws they see in proposed condition 10 in that it will not effectively limit noise and it will not avoid future breaches of the increased noise contours;
- vii) does not include proposals that will over time, result in significant diminution and betterment of the effects of aircraft operations on the

amenity of local residents, and users of sensitive premises in the area, through measures to be taken to secure fleet modernisation or otherwise.

- 4.13. I note that the revised Condition 10 has a secondary element which requires the submission of a strategy which defines the methods to be used by LLAOL to reduce the noise by 2028, but I further note that no clear measures and mechanisms, to ensure that such reductions would or could be achieved, are provided by the Applicant.) There is therefore, clear and significant conflict between the proposed Section 73 development and the key policy of the Local Plan.
- 4.14. The clear conflict with the LLP that arises from the Section 73 Application must be assessed in light of paragraphs 11 and 12 of the Framework. On the basis of paragraph 12 of the Framework where an application conflicts with an up to date development path permission should not usually be granted. In my view that is the start point from which consideration of the Section 73 Application should flow. Whilst decisions may depart from an up to date development plan this should only be the case if material considerations indicate that the plan should not be followed.
- 4.15. The Applicant's position is that the Section 73 Application is in accordance with the development plan and is supported by development plan policy, and that in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and the presumption in favour of sustainable development continued in paragraph 11 of the framework, planning permission should be granted.

I disagree with that position for the following reasons:

- My evidence refers to conflict with criteria B (iv) (v) (vii) of Policy LLP6 of the LLP;
- The proposals do not achieve noise reduction or non-material increases in noise in accordance with the Airports most recent Airport Noise Action Plan – if any increase in the extent of the noise contours (up to and beyond 2028) generates the need to formally amend conditions 8 and 10 of the 2017 Planning Permission via a Section 73 such increases must be

material in planning terms. The clear policy requirement of Policy LLP6B(v) is that these aspects are to be considered against the most recent Airport Noise Action Plan (CD13.11) and the pre and post 2028 noise contours set out in that document are breached by the proposed condition 10.;

- The application does not include proposals that will over time, result in a significant diminution and betterment of the effects of aircraft operations. There is no clear strategy or methodology about how changes to aircraft mix, aircraft types, overall ATM's will be managed and controlled by the Applicant to secure and deliver the post 2028 reductions. I note that many of these aspects rely on commercial and operational decisions of others such as airline operators and aircraft manufacturers.

4.16. On that basis I am of the opinion that the Section 73 Application is in conflict with the LLP, Section 38 (6) of the Planning and Compulsory Purchase Act 2004 and paragraph 12 of the Framework indicates that planning permission should not be granted, unless material considerations dictate otherwise.

4.17. The LPA seems to recognise conflict with the LLP but do not address directly in their Statement of Case that, where an application does not accord with the local development plan, paragraph 12 indicates that planning permission should usually be refused. That said paragraphs 7.63 – 7.20 of the Statement of Case deal with The Planning Balance without referring to the fact that the Framework indicates that planning permission should be refused unless material considerations indicate otherwise. The overall exercise undertaken by the LPA in weighing negative matters in relation to climate change, noise, highways and air quality against the benefits and importance of the sustainable growth of the Airport to Luton and the wider sub-region seems to be somewhat skewed as a result.

4.18. For example, at paragraph 206 of the officer Committee report on the Section 73 Application (CD.5.08) it is unequivocally stated that *"the variation to the noise condition will result in an increase in the area within both the LOAEL and SOAEL,*

resulting in more local residents being exposed to noise, and cannot adequately mitigate the impacts of the significant adverse effects.” On that basis the Section 72 Application is clearly at odds with the Local Plan (which states that such increases must be avoided if development proposals are to be supported), and also runs contrary to national planning policy on noise and aviation noise. Those matters weigh heavily against the proposed variation of conditions 8 and 10 in my view. At paragraph 211 of that officer Committee report (CD5.08) it is asserted that *“real economic benefits will be delivered as a result of the expansion proposals, and these weigh heavily in favour of the proposed development and in accordance with the NPPF should be given significant weight”*.

- 4.19. I have reservations about that approach. One key point I would make is that Policy LLP6 of the LP is predicated on an acknowledgement that airport growth (to an operating capacity of 18 mppa) is a key aspect of local economic growth and an economic driver which brings economic activity and jobs to the town of Luton and neighbouring authorities. Policy LLP6 is intended to make provision for such future growth to take place in order to support and safeguard the contribution that the Airport makes to the Luton sub-region in terms of jobs and wealth creation. Those positive economic factors are in effect ‘baked into’ Policy LLP6 and the LP. The criteria within Part B of Policy LLP6 set the *‘clear environment and transport framework with which to regulate future growth’* (paragraph 4.51 of the LP).

The criteria which seek to balance the negative environmental and community impacts within Policy LLP6B should not be set aside or overruled lightly. In my view LLP6B rightly seeks to reduce the number of people affected by noise and mitigate and minimise the effect of noise, and the historic decisions to impose/retain conditions 8 and 10 on the 2017 Planning Permission struck the appropriate balance between the competing positive and negative impacts. In my view the Applicant has failed to demonstrate that a contrary decision is justified at this juncture.

Other Material Planning Considerations

- 4.20. National Planning Policy and National Planning Practice Guidance (PPG) are material planning consideration and I have set out those aspects I believe are of greatest relevance earlier in my evidence.
- 4.21. The Framework does not provide any specific policy on airports or aviation. I have referred to those aspects of National Policy which provide support to economic growth and productivity, and I believe that the policies of the LLP (and in particular Policy LLP6 of the LLP) are consistent with paragraph 82 of the Framework.
- 4.22. My evidence also refers to those aspects of the Framework dealing with noise and other environmental impacts of proposed development. Key to this matter is paragraph 185(a) of the Framework which states that planning decisions should:
- “a) Mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and the quality of life.”*
- 4.23. It is clear to me that the reason that conditions 8 and 10 were retained on the 2017 Planning Permission was an attempt to mitigate and reduce the potential adverse impacts of the underlying development in terms of noise. The imposition of those conditions (and the mitigation of noise that they provided) on the 2014 Planning Permission was fully considered and justified within the officers Committee report for the 2014 Planning Permission (CD09.08). In retaining those conditions on the 2017 Planning Permission, the LPA applied what I consider to be a reasonable and balanced approach. The current Section 73 Application does not achieve the same levels of mitigation and reduction in noise/noise exposure. The Explanatory Note to the Noise Policy Statement for England (CD13.06) indicates that the SOAEL is the level above which significant adverse effects on health and quality of life occur. The first aim of the Noise Policy Statement for England is:

“avoid significant adverse impacts on health and quality of life from environmental and neighbourhood noise within the context of Government policy on sustainable development.”

- 4.24. In my view this means that when applying Government policy on sustainable development as set out in the Framework, a decision maker should seek to avoid allowing development proposals which would result in significant adverse impacts on health and quality of life arising from noise.
- 4.25. The approach in the Noise Policy Statement for England is reflected in National Planning Practice Guidance – Noise (CD09.06).

PPG Noise indicates that the planning process should be used to avoid the ‘significant observed adverse effect’ level occurring, and states:

“While such decisions must be made taking account of the economic and social benefit of the activity causing or affected by the noise, it is undesirable for such exposure to be caused.”

(Paragraph: 005 Reference ID: 30-005-20190722)

The PPG Noise also sets out a number of more specific factors to consider in determining whether noise could be a concern, and these include:

- Cases where existing noise sensitive locations already experience high noise levels, a development that is expected to cause even a small increase in the overall noise level may result in a significant adverse effect occurring even though little or no change in behaviour would be likely to occur.

This case seems to be one where the Inspectors would wish to bear this specific factor in mind.

- 4.26. In terms of managing the environmental effects associated with airport expansion PPG Noise points towards the Aviation Policy Framework (CD10.04). Relevant aspects of the Aviation Policy Framework (APF) are set out earlier in my

evidence and at this point I would simply point to the overall objective set out of paragraph 17 of that document, which states:

"Our overall objective on noise is to limit and where possible reduce the number of people in the UK significantly affected by aircraft noise."

The Section 73 proposal does not limit or reduce the number of people significantly affected by aircraft noise. On the contrary (based on the conclusions in the ES) it would see an increase in the number of people significantly affected by aircraft noise. On that basis I conclude that the overall objective of the Aviation Policy Framework is not met.

- 4.27. Earlier in my evidence I have referred to a number of material considerations – e.g. Airports National Policy Statement; Flightpath to the Future; Beyond the Horizon; The Future of UK aviation Making Best use of Existing Runways. I fully recognise and acknowledge the positive support that there is in all of those documents for the expansion (physically and for operationally) of the Airport. I note that such Government Policy support for airport growth and expansion is not unqualified nor is it prioritised above other considerations, including the community and environmental impacts arising from such growth. This is expressed very well at paragraph 1.29 of MBU (CD10.13) which it is worth repeating again at this juncture:

"Therefore, the Government is supportive of airports beyond Heathrow making best use of their existing runways. However, we recognise that the development of airports can have negative as well as positive local impacts, including noise levels. We therefore consider that any proposals should be judged by the relevant planning authority, taking careful account of all relevant considerations, particularly economic and environmental impacts and proposed mitigations."

- 4.28. A major plank of the Applicants case which has been taken forward by the LPA as the main material consideration which weighs in favour of a grant of planning permission in this case are the economic benefits arising from the proposed development.

- 4.29. Mr Chapman and I have both expressed concerns in our evidence about the absence of up to date and clear information submitted with the application to deal with the specific additional economic and social benefits that arise from the increased passenger capacity of 19 mppa. As set out earlier at paragraph 2.3 of my evidence, it is clear that both the limit of 18 mppa imposed in the 2014 Planning Permission and subsequently forming Condition 8, and the noise contour limit imposed by Condition 10 were carefully considered to strike an appropriate balance between the economic benefits predicted to arise from the underlying operational development (which has subsequently been delivered) and the environmental and community impacts arising from that development, principally noise and emissions. Both elements were seen as key to mitigating the negative environmental and local community impacts of the development.
- 4.30. As I have indicated at paragraph 4.23 above detailed and careful consideration was given to the original imposition (on the 2014 Planning Permission) and retention of conditions 8 and 10 on the 2017 Planning Permission. Any decision at this stage which would materially reduce the level of mitigation secured by those conditions would represent a departure from a previously carefully considered and robust position taken by the LPA. Such a departure from a previously robust position would require compelling supporting evidence, in order to avoid the appearance of inconsistent decision making. In my view the overarching policy of LLP6 requires a similar consideration and a similar level of mitigation to achieve consistency in decision making.
- 4.31. I take the view that if weight is to be attached to claimed economic and social benefits arising from the proposed increase in passenger throughput of an additional 1 mppa those benefits must be set out and particularised in evidence. A decision maker must be able to understand what those claimed economic benefits are if they are to be weighed in any planning balance exercise. As far as I am aware the Applicant has not produced any new information or evidence on socio-economic benefits in connection with[^] the Section 73 Application and relies entirely on the 2012 socio-economic information which accompanied the 2014 Planning Permission.

4.32. The economic benefits that LPA appears to have taken into account in its assessment of the Section 73 Application are set out at paragraphs 168-177 of the officer report to Planning Committee (CD.5.08). This summary largely paraphrases benefits set out in the Applicant's Planning Statement (CD1.07) which seem to relate to economic benefits which have been, or which continue to be, delivered by the underlying granted by the 2014 Planning Permission. Again, there are no specific references to any information/evidence of additional economic or social benefits arising from the proposed variation of Condition 10 on the 2014 Planning Permission to allow an additional 1 mppa. Notwithstanding the absence of such specific information on socio-economic benefits the officer report to Planning Committee (CD5.08) arrived at the following broad conclusions:

"The proposal would be unlikely to result in any significant increase in employment at the airport, since the extra 1 mppa passengers would be able to be absorbed into the existing system without any significant material impacts in terms of employment. However, the benefits from the additional passengers would be important since it would support airport staff as well as the wider area. It would also safeguard and sustain the continued commercial viability of the airport and, therefore by extension, safeguard and sustain existing jobs. It would therefore, be likely that the proposal, which involves variation to the original permission for the expansion of the airport, would have a significant benefit to the wider area. The conclusion of the environmental statement associated with the original application to expand the airport remain valid, namely that the proposed development would have significant beneficial effects for not only the local economy within Luton, but also within the wider area."

As mentioned earlier in this evidence I am unclear what information these conclusions were based on, as there is no specific up to date economic benefits evidence submitted with the Section 73 Application. There is no clear evidence about specific benefits (economic and/or social) that are predicted to be delivered directly by the proposed increase of passengers by 1 mppa. Nor is there any evidence provided by the Applicant to indicate that there would be adverse economic impacts on the operation or commercial viability of the

Airport if the Section 73 Application to increase the passenger throughput by 1 mppa is not granted. Given the absence of any tangible and up to date evidence on these aspects I find it difficult to understand how the LPA is able to attribute significant weight to economic benefits, when such benefits are not specified or quantified by robust evidence.

- 4.33. Mr Chapman has noted in his evidence that the Applicant's positive case for approval of the Section 73 Application rests almost entirely on economic arguments. Mr Chapman notes that socio-economic aspects were 'scoped out' of the ES for the current Section 73 Application on the following basis:

"As there are no additional significant socio-economic effects that would require further consideration as a result of the proposed scheme the conclusions made within the 2014 Planning Permission 2012 ES remain valid."

Mr Chapman then sets out the concerns he has about utilising the 2012 analysis in the context of the current Section 73 Application. Mr Chapman's concerns seem entirely reasonable to me, and I too would question whether there is robust and up to date information on socio-economic benefits to enable a decision maker to attach any significant weight in the decision-making process. Indeed, the position of the Applicant seems to be to rely on the economic benefits predicted to arise from the 2014 Planning Permission in any event. I note that there does not appear to be any information or analysis to suggest that the increase in passenger throughput itself would have any additional significant socio-economic effects.

The Planning Balance

- 4.34. My view is that the start point for consideration of the planning balance arises from the Section 38(6) of the Planning and Compulsory Purchase Act 2004, and the application of the presumption in favour of sustainable development (paragraphs 11 and 12 of the Framework). I agree with the LPA that there is clear conflict with the Local Development Plan for the reasons set out earlier in my evidence.

- 4.35. Paragraph 12 of the Framework is clear that where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. I invite the Inspectors to adopt that position as a start point.
- 4.36. It is the case that the proposed amendments to Condition 10 will lead to an increase in the number of people exposed to noise above the SOAEL. My review of relevant aviation noise policy (Noise Policy Statement for England; Aviation Policy Framework) indicates that a clear policy aim is to limit and where possible reduce the number of people significantly affected by aircraft noise. The Applicant indicates that the proposal will ultimately deliver no material increase in day or night time noise over time. The Inspectors will need to consider whether they agree with that assertion. In considering this aspect I would invite the Inspectors to focus on the following aspects in particular:
- i. The proposed changes to Condition 10 (which result directly from the proposed change to condition 8) increase the extent of the day time and night time contours for the period up to the end of 2027 – thus leading to an increased number of people significantly affected by aircraft noise between now and the end of 2027;
 - ii. The changes increase the extent of the day time and night time contours for the period 2028 onwards, thus leading to an increased number of people significantly affected by aircraft noise from 2028 onwards;
 - iii. The delivery of the reductions on the extent of the day time and night time contours beyond 2028 are reliant on a strategy and methods to deliver those reduction which are not specified or detailed as part of the current application. History indicates – and the ES confirms – that the timeframes of changes to aircraft and aircraft fleets that are required to achieve the required reductions are unpredictable;
 - iv. The Condition 10 as proposed to be modified does not provide any mechanism for the LPA to subsequently control or curtail passenger throughput should the noise contours be breached. In the context of policy at paragraph 3.3 of the APF (CD10.04) I do not consider that the

Applicant has demonstrated with any reasonable degree of certainty that noise levels will fall as a result of technology improvements. It seems that the Airport is seeking to have the benefits to the aviation industry (in terms of the 1 mppa increase to passenger throughput) without providing any detail or certainty that the projected reduction in noise impact will actually occur. The Applicant has been unable to provide robust detail of the technology improvements required to deliver the assumed noise contour reductions over time, and, in my opinion, this is contrary to the APF which indicates that the aviation industry can share the benefits “*As noise levels fall with technology improvements*”. The variation to Condition 8 would see the Applicant benefit from increased passenger throughput on the basis of future falls in noise which it is hoped will be secured through technology improvements, but which are outwith the direct control of the Applicant.

- 4.37. Again, I would refer to the serious concerns raised by LADACAN and Mr Roberts about the technical information that is provided by the Applicants. Mr Roberts refers to the lack of clarity and robustness of the assumptions adopted by the Applicant to arrive at the proposed noise contours. Mr Roberts does not consider that there is clear and robust evidence to demonstrate that they are reasonable or that they could be achieved. I would expect the Inspectors to have clear evidence that the noise contours they are being asked to consider are actually achievable. Mr Roberts consider that the Applicants evidence on noise is so unclear that a grant of planning permission for the Section 73 Application can be supported. Furthermore, to the extent that the noise evidence can be understood Mr Roberts has drawn attention to the absence of a management plan or other mechanism to meet the expectations of proposed condition 10 in terms of delivering noise reductions over time.
- 4.38. I am of the opinion that the proposed amended Condition 10 as drafted (and with the provisions of the update S106) is not sufficiently robust or precise, and will not be capable of enforcement. I am not confident that the amended Condition 10 will be effective in securing sufficiently robust controls to ensure

that the day time and night time noise contours are achieved and respected at all times.

4.39. The policy/development plan conflicts I have referred to militate strongly against the grant of planning permission in my view. Furthermore, I consider that Government policy, which makes clear that airport expansion development proposals should limit and reduce the number of people significantly affected by aircraft noise, is not satisfied by the Section 73 Application. For the Inspectors to find that material considerations outweigh those policy conflicts there would need to be robust, compelling and strong evidence to support that finding.

4.40. Both the Applicant and LPA rely on claimed social and economic benefits arising from the Section 73 Application, but have done so by reference to the 2012 ES (CD6.02). I would reiterate that the social and economic benefits arising from the underlying development granted planning permission under the 2014 and 2017 Planning Permissions are effectively baked into Policy LLP6 of the LLP. As explained in Mr Chapman's evidence and by me, there does not appear to be any clear and specific evidence of socio-economic benefits arising specifically from the Section 73 Application. There is no evidence to support the key aspects relied upon by the LPA to tip the planning balance in favour of a grant of planning permission- i.e.

- No evidence of direct or indirect job creation;
- No evidence of how or to what extent the additional 1 mppa (and associated expenditure by them) would support and sustain the employment of airport and aviation related staff;
- No evidence of how the Section 73 proposal would safeguard the continued viability of the airport and existing direct and indirect jobs;
- No evidence on how the Section 73 proposals would prevent the loss of jobs.

In the absence of any such evidence I do not consider that the significant economic benefits relied upon by both the Applicant and the LPA can be

afforded anything other than limited weight. On that basis I am of the opinion that the planning balance indicates that planning permission be refused.

Climate Change

- 4.41. Ms Hewitt deals with climate change aspects in some detail in her evidence, and I make only general planning observations on these aspects. By reference to national planning policy and guidance it is clear that emissions arising from any significant development and the climate change implications associated with those emissions are a material planning consideration. It is the case that the proposed variation of condition 8 on the 2017 Planning Permission would increase the passenger throughput of the Airport by 1m ppa. That will result in increased numbers of flights and passenger journeys, with resulting increased emissions.
- 4.42. Based on the conclusions set out in the Transport section of the ES (CD1.12) the Section 73 proposals will result in an increase in overall traffic volumes in comparison to the current forecasts. Whilst these increases are described as 'minor' in the ES they will inevitably lead to an increase in emissions from vehicles. Irrespective of how minor any increase in emissions from additional traffic volumes may be that increase represents a negative impact of the proposed variation of conditions 8 and 10. Any such increase is not a positive factor which weighs in favour of the Section 73 Application being granted.
- 4.43. I am aware that the LPA declared a 'climate emergency' in January 2020 – pledging that Luton is to be a carbon neutral town by 2040. Luton is one of a growing number of local planning authorities making such declarations which acknowledge the impacts of climate change and outline how activities and decisions will need to reflect a changed approach to reduce carbon emissions, and enable more sustainable living across local communities.
- 4.44. The declaration of a climate emergency is capable of being a material planning consideration in my view and I am aware that decision-makers (including Planning Inspectors) are recognising such local declarations in the decision-making process. I attach one such decision where this emerging aspect is cited

by the Inspector at Appendix 2 – APP/Y2620/W/16/3143028 dated 3 February 2020, and would highlight paragraphs 87 – 89 of the decision letter.

- 4.45. The Inspector in that case saw the LPA's declaration of a 'climate emergency' as an important development in the LPA's stance and approach to all of its functions. The proposed development at issue in the appeal at my Appendix 2 was a single wind turbine which the Inspector found to be consistent with and supported by the relevant development plan. The Inspector opined that there was something of a contradiction for the LPA to resist a development plan for compliant green/renewable energy development having declared a climate emergency. In my view the Section 73 Application in this case is for a form of development which has acknowledged negative climate change/emission impacts, and which is in conflict with the relevant policies of the LP. Having declared a climate emergency there does seem to be a contradiction in the position adopted by the LPA in this case. Approval of the Section 73 Application as a departure from the development plan does not sit consistently with the ambitions and aims of the LPA to secure carbon neutrality by 2040.

Issues Arising from the Proposed Varied Conditions and the Tests for Planning Conditions

- 4.46. Planning Conditions can be used to make otherwise unacceptable development acceptable. NPPG on the Use of Planning Conditions (CD09.06) indicates that:

"When used properly, conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects. The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable."

(Paragraph: 001 Reference ID: 21a-001-20140306).

- 4.47. It must be the case that when imposing conditions on the 2017 Planning Permission the LPA was content that Conditions 8 and 10 met the six tests for conditions, and that they were consistent with the Framework and NPPG.
- 4.48. The Framework and NPPG are clear that planning conditions should be kept to a minimum and only used where they satisfy the following test:
1. Necessary;
 2. Relevant to planning;
 3. Relevant to the development to be permitted;
 4. Enforceable;
 5. Precise; and
 6. Reasonable in all other respects.

NPPG on the Use of Planning Conditions was first published in March 2014 and it replaced Circular 11/95: the Use of Planning Conditions in Planning Permission. I assume therefore, that the relevant Conditions (8 and 10) as imposed on the 2017 Planning Permission met the tests of necessity and reasonableness – i.e. they were necessary to mitigate the adverse impacts of the underlying operational development; and that they were reasonable in that they did not place unjustifiable or disproportionate financial burdens on the applicant (see NPPG Paragraph 005 Reference ID: 21a-005-20190723). I would stress that the imposition of the conditions was deemed necessary in order to balance the positive social and economic benefits set out in the 2012 ES (CD6.02) and the negative environmental and local community impacts. The economic benefits relied upon by the Applicant for the Section 73 Application are the same benefits as set out in the 2012 ES (CD6.02) and the Applicant has not, in my view, justified why the same level of mitigation is not necessary.

- 4.49. Given the statutory framework to a Section 73 Application I would suggest that it is necessary for the LPA (or other decision maker) to fully understand the background to the conditions at issues in order to arrive at a decision as to whether to leave those conditions unaltered (refuse the application), or whether

to grant the planning permission unconditionally or with conditions differing from those subject to which the previous permission was granted.

4.50. I do not consider that these aspects have been addressed directly by either the Applicant or the LPA. Therefore, my evidence seeks to assist the Inspectors by briefly addressing those matters.

4.51. As far as I can see from the Statements of Case of the Applicant and the LPA there is no suggestion that the planning permission should be granted unconditionally. I agree that to grant planning permission without conditions which mitigate the adverse impacts arising from the development (in particular noise) would be unacceptable. I consider that the two aspects to be utilised in order to provide the required levels of mitigation are noise control via noise contours and a cap on the overall passenger throughput at the Airport. Historically when granting the 2014 and 2017 Planning Permissions the LPA arrived at a position where they considered that those matters could be addressed:

- Uncertainty regarding passenger numbers and mitigation of increased effects on the environment could be minimised by capping passenger throughput;
- Uncertainty regarding the balance between rate of noise mitigation and rate of growth could be minimised by limiting the areas of noise contours to ensure that the numbers of people affected by aircraft noise does not increase.

4.52. In my view these two factors remain essential in terms of ensuring that the expansion of the airport balances the economic benefits of proposed development against the environmental effects, within the context of the LLP, national policy and guidance.

4.53. Having struck what was considered to be the appropriate balance, the LPA considered it necessary to impose conditions 8 and 10 on the 2017 Planning Permission. In my view the Applicant has failed to demonstrate that those conditions as formulated no longer meet the tests for conditions, or that they are not necessary to mitigate the impacts of the development to an acceptable

level. In my opinion it is essential that the conditions limiting passenger numbers and mitigating noise impacts of the development remain in place in order for the development to be policy compliant and acceptable in planning terms.

- 4.54. In considering whether planning permission should be granted subject to conditions differing to those subject to which the 2017 planning permission was granted the Inspectors are asked to note the inextricable interlock between Conditions 8 and 10. Any tangible increase of the passenger throughput will generate noise impacts which would require the noise contours to be increased, as the history of this development has clearly shown.
- 4.55. However, it is apparent that the existing 2017 Planning Permission Condition 10 has not been effective in ensuring that the noise contours it sets out (which resulted from a thorough and rigorous assessment of noise impacts by consultants advising the LPA) have been met and complied with. It is a matter of public record that Condition 10 has been breached on a number of occasions. It is also clear that the LPA has apparently taken the view that it would not be expedient to enforce Condition 10, albeit that the basis for the LPA's decision to under-enforce is not publicly available.
- 4.56. I consider that Condition 10 as it is proposed to be varied lacks clarity and precision in that it does not provide any mechanism whereby operations outside the noise contour requirements of Condition 10 would be controlled or curtailed in any meaningful way. There was non-permitted development of throughput at the Airport in breach of condition 10 prior to the Covid pandemic. That resulted from the ineffective wording of condition 10 which failed to restrict and control operations within the specified noise contours.
- 4.57. The Applicant has suggested that the demand for capacity (pre pandemic) was outside their control and that it had increased at a faster rate than previously predicted or assumed. I would stress that decisions are to be taken in accordance with the LLP and based on all relevant material considerations, and that planning is intended to manage the development and use of land in the public interest. Policy LLP6 provides the policy context within which the Applicant can seek further expansion of its operations, including expansion arising from

unanticipated growth in demand for capacity. However, decisions on any application for growth (physical or operational) are to be taken in the public interest and fall to be considered against the relevant criteria of Policy LLP6 of the LLP, and not just on the basis of unforeseen additional demand.. Given that background it would be understandable for the Inspectors to have some concerns that the assumptions and predictions that they are invited to give weight to in the context of the Section 73 Application are also unreliable, and/or that any varied conditions (and Section 106 obligations) need to be carefully and precisely worded so that future uncertainty does not render them ineffective. The Applicant's position as set out at paragraph 4.3.2 of the Planning Statement (CD1.07) is to seek a relaxation of Condition 10 to provide for "*a less restrictive day and night contour than that currently set out*", and that such an increase in the noise contours is actually required to accommodate the 18 mppa. In any event. The same paragraph went on to state:

"As detailed at Section 3.9 when the airport was operating at its existing capacity of 18mppa there were breaches of the noise contours due to the higher than predicted growth in passenger demand, the delay in delivery of modernised aircraft (e.g. Airbus Neo and grounded B737 MAX) and disruption to European Air Traffic Control from significant weather events and industrial action resulting in flight delays. Therefore, the need to enlarge the noise contours exists independently of the proposed increase of the 18 mppa cap to 19 mppa".

- 4.58. Subsequent paragraphs of the Planning Statement (CD1.07) then go on to refer to reductions in the noise contours over time (beyond 2028) being reliant on the introduction of a newer and quieter aircraft fleet mix which is anticipated to be delivered by others. There is a clear risk that, as has clearly happened since the 2014 and 2017 Planning Permissions were granted, passenger numbers and ATMs increase more rapidly than fleet modernisation, which leads to a breach of the noise contours without any in-built mechanism that requires passenger numbers or numbers of flights to be curtailed until such time as the noise contours can be respected. There remains uncertainty that the technology improvements required to secure those longer-term reductions in the noise

contours will emerge at the pace that would be required, since the ES admits that the benefits from at least one type of modernised aircraft (the A321neo) have not been of the expected magnitude in the context of its operation at the Airport.

- 4.40. For the reasons set out at paragraph above I consider this approach to be inconsistent with the APF (CD8.05) in terms of the sharing of benefits between the aviation industry and local communities.
- 4.41. For these reasons I am of the opinion that, if the Inspectors are persuaded that the Section 73 Planning Permission should be granted, it is appropriate for a more robust suite of conditions and Section 106 obligations to be considered. I am aware that LADACAN have advocated a number of possible approaches to be considered in terms of a performance bond coupled with external and independent oversight and scrutiny. I agree that additional and/or more robust controls around noise limits would be necessary should the amended condition 8 to increase passenger capacity be agreed.
- 4.42. My evidence has set out why I consider the proposed Section 73 variations to conditions 8 and 10 of the 2017 Planning Permission should not be granted planning permission. The proposed variation to condition 8 to increase the passenger cap to 19mppa, and to condition 10 to increase the noise contour areas and extend the timeframe for long-term reduction, would result in conflict with the LP and Policy LLP6B in particular. Limiting passenger numbers and balancing growth with fleet modernisation are key measures in mitigating noise and the impacts of noise on the local community. The Applicant has failed in my view to make its case for reducing the level of mitigation of noise experienced by the local community. The Applicant has failed to demonstrate robustly why the key criteria in Policy LLP6B should not be respected.
- 4.43. Social and economic benefits arising specifically from the requested increase in passenger numbers have not been indicated or quantified, and the Applicant appears to rely on out-of-date and generic forecasts and assessments from 2012. In my opinion very limited weight can be afforded to such information, particularly as it does not focus on the specific proposal. I consider that the case

to increase the passenger cap by 1 mppa based on economic benefits arising specifically from that increase has not been made.

- 4.44. Furthermore, the case for allowing the passenger cap increase is predicated on the increased noise contour limits arising from varied condition 10 being reasonable and achievable. The Applicant has not provided clear and compelling evidence that those limits are achievable or that they will be effective. Taking all of these factors into account my opinion is that planning permission should not be granted for the varied conditions 8 and 10 as proposed by the Section 73 Application.
- 4.45. If, however, the Inspectors are persuaded that the case to increase the passenger cap has been robustly made, and that a decision otherwise than in line with the LP is justified, I would reiterate my concerns regarding the effectiveness of condition 10 as proposed. For reasons that I have set out above I consider that the Inspectors would need to be satisfied that the noise contours specified in the proposed condition 10 (for both the pre and post 2028 periods) are reasonable and achievable. It is apparent that adherence to the noise contours (and securing the post 2028 reductions to the noise contours) is based on assumptions and predictions of how and when others (airlines and aircraft manufacturers) will modernise the aircraft responsible for generating noise and schedule those modernised aircraft into the Luton movements. It is clear from the history of this development as evidenced in the ES that previous assumptions and predictions in this regard have not always materialised. With that in mind I would invite the Inspectors to consider a variation of condition 10 (alongside parallel obligations in the Section 106) which would seek to control or curtail airport activity and operations which results in the set noise contours being breached. I recognise that this may be a complex requirement given the nature of the Airport operations but for the conditions to be effective in mitigating noise (which is the overall reason for conditions 8 and 10) there should be a mechanism which would require the Airport to consistently and responsibly operate within the limits specified by the relevant condition.

4.46. I am aware that this issue has arisen in other airport expansion/operation cases and I seek to assist the Inspectors by drawing attention to one such example. At Appendix 3 I have attached an extract from the report of the Planning Appeals Commission into matters arising from a planning agreement relating to George Best Belfast City Airport. The extract I have provided is a section of the report is headed 'Noise and Noise Control'. I would draw attention to paragraph 140 as it deals with issues and factors that are relevant also to Luton London Airport. Paragraph 140 states:

- *"We acknowledge that noise envelopes are suggested in the APF and that they are used for daytime control at main airports such as Manchester, London, Luton, London Stansted and London Heathrow. However, the APF also recognises that proposals for the expansion of regional airports can have negative as well as positive impacts, including on noise levels and should therefore be judged on their individual merits (paragraph 1.24). Our concern with the control system proposed by GBBCA is that there is no sanction or penalty if the noise cap is found to be exceeded other than that the airport would be required to submit to the Department and implement an Action Plan to avoid the possibility of exceeding the control contour area. At the very least there should be some form of mechanism requiring any breach to require a financial contribution to the community fund."*

4.47. I appreciate that each case must be considered on its own merits but consider that the following key points can be taken from the approach of the Commissioners:

- That it was legitimate for the Commissioners to have concerns that the noise control system proposed did not provide for any sanction or penalty if the noise cap contour was exceeded;
- That (at the very least) there should be a mechanism requiring any breach to trigger a financial contribution to a community fund.

4.48. Given the historic issues with compliance and enforcement of condition 10 in particular I would urge the Inspectors (if persuaded that the Section 73 Application should be granted planning permission) to consider whether amended conditions could be drafted so as to provide more effective control and/or include appropriate and effective sanctions should breaches occur in the future.

5. SUMMARY/CONCLUSIONS

Conflict with the Local Plan

- 5.1 In my opinion the proposed Section 73 Application conflicts with the LLP. The LLP supports the growth and expansion of the Airport recognising that it would deliver important social and economic benefits. The LLP also recognises that such growth comes at a price in terms of significant negative environmental and local community impacts. The policy support for expansion and growth of the Airport is not unqualified.
- 5.2 Policy LLP6 of the LLP seeks to balance these aspects by providing a clear and comprehensive set of criteria for noise control which must be met if a development for expansion is to be supported. Those criteria are essential in ensuring that negative impacts of development are minimised and mitigated in a reasonable and balanced way. Therefore, non-compliance with those criteria is not a matter to be dismissed lightly.
- 5.3 My evidence sets out my view that the Section 73 Application is in conflict with criteria (iv), (v) and (vii) of Policy LLP6B, and is not in accordance with the LLP. The start point arising from the plan-led approach to decision making and paragraph 12 of the Framework is that planning permission should be refused, unless material considerations indicate otherwise.

Other Material Considerations (Policy)

- 5.4 In assessing other material considerations, I have identified relevant aspects of national planning policy and guidance and other topical aspects of national/Government policy. I recognise that there is broad support in these various documents for airport growth and expansion, but such support is not unqualified. For example:
- The APF (CD10.04) – has an overall objective “to limit and where possible reduce the number of people in the UK significantly affected by aircraft noise”. The APF seeks to strike a reasonable balance between the positive benefits that can derive from growth in aviation and flights and the negative impacts of noise.

- MBU (CD8.09) – the Government recognises both the negative and positive impacts of airport development. The Government is clear that any proposals must be judged taking careful account of all relevant considerations, *“particularly economic and environmental impacts and proposed mitigations”*.

5.5 I do not consider that relevant aspects of national policy indicate that economic benefits automatically or inevitably outweigh other aspects.

Other Material Considerations (Social and Economic Benefits)

5.6 The Applicant relies on economic benefits as the main plank of its case. The LPA has indicated that it attaches significant weight to those claimed economic benefits. However, as both Mr Chapman and I have pointed out the Applicant has not produced any up-to-date or specific evidence which identifies and/or quantifies economic or social benefits which arise directly as a result of the Section 73 Application. Rather, the Applicant relies on the 2012 ES (CD6.02) content on social and economic benefits. Mr Chapman deals with the flaws in this approach in his evidence. I have identified two main issues that I consider arise from this reliance on the 2012 ES social and economic benefits.

First, those benefits were fully taken into account in the formulation of Policy LLP6 of the LLP. It was the prospect of those benefits which led the LPA to support (through Policy LLP6) the growth and expansion of the Airport operations to 18 mppa, notwithstanding that such growth would result in negative environmental and local community impacts. Therefore, Policy LLP6 ‘baked-in’ and gave full weight to those benefits (as set out in the 2012 ES), and set out clear and firm criteria to ensure that negative impacts were limited and mitigated.

5.7 Secondly, I consider that if a development proposal to increase the passenger throughput by 1 mppa (but which fails to meet the relevant criteria of Policy LLP6B), is to be supported on the basis social economic benefits, there must be clear and compelling evidence that additional or different benefits will be delivered. Such evidence (specific to the proposed variation of condition 8 to increase the passenger throughput by 1mppa) is not provided by the

Applicant. I fail to see how any weight can be attached to claimed social and economic benefits that have not been evidenced or quantified.

The Planning Balance

- 5.8 The conflict with the LLP in this case indicates that planning permission for the Section 73 Application should be refused, unless material considerations indicate otherwise. In this case it is clear to me that Policy LLP6B was carefully drafted to ensure that there was a framework within which future growth would be regulated. Policy LLP 6B is clear that proposals for expansion of the airport and its operations will only be supported if the criteria in Policy LLP 6B are met. Those criteria are not met.
- 5.9 For the planning balance to be tipped in favour of the Section 73 Application there would, in my opinion, need to be a clear and compelling case that other material considerations would outweigh and override the conflict with the LLP. As set out above I do not consider that a clear and compelling case has been made on the basis of additional and/or different social and economic benefits arising directly from the proposed changes to condition 8.
- 5.10 Furthermore, I consider that the imposition of the existing conditions 8 and 10 on the 2017 Planning Permission (carried forward from the 2014 Planning Permission) were thoroughly and carefully considered by the LPA, and followed a balanced approach that was accepted and supported by the Applicants. That approach gave full regard to the tests for planning conditions and, in particular, recognised that conditions 8 and 10 were necessary to mitigate the negative impacts of the underlying development to an acceptable level. The conditions were also considered reasonable in that they did not place unjustifiable or disproportionate financial burdens on the Applicant. Both a limit on the overall passenger throughput (18 mppa) and the identification of noise contour limits that balanced growth with fleet modernisation were the key means by which the adverse impacts of the airport expansion could be mitigated. The Applicant has failed to demonstrate and justify why those key controls and limits should be reduced when to do so results in reduced levels of mitigation. I have not seen any evidence which seeks to explain why reduced levels of mitigation are justified.

- 5.11 For these reasons I do not consider that the planning balance suggest a decision otherwise than in accordance with the LLP. The dated and general information on social and economic benefits relied upon by the Applicant does not outweigh the conflict with the LLP. The Section 73 Application should not be granted.

Issues Arising from the Proposed Varied Conditions

- 5.12 In my opinion it is important that conditions limiting passenger numbers and mitigating noise impacts are in place if the Section 73 Application is to be found to be policy compliant and acceptable. Any increase in the passenger cap should be contingent upon a clear understanding of whether and to what extent reductions in noise and other impacts over time will be secured. Any conditions (and associated Section 106 obligations) must be drafted carefully and precisely to ensure that they are ultimately effective.
- 5.13 Mr Lambourne and Mr Roberts have set out in evidence the concerns that they have about the effectiveness of the proposed condition 10. They do not believe that the Applicant's information provides a clear case that the proposed noise contours are achievable or that they would be effective. It is apparent that adherence to the noise contours (and securing the post 2028 reductions to the noise contours) is based on assumptions and predictions of how and when others (airlines and aircraft manufacturers) will modernise and schedule the aircraft responsible for generating noise. It is clear from the history of this development that previous assumptions and predictions in this regard have not always materialised.
- 5.14 I have drawn attention to a similar situation in respect of George Best Belfast City Airport (Appendix 3) where the Planning Appeals Commissioners considered:
- That it was legitimate for the Commissioners to have concerns that the noise control system proposed did not provide for any sanction or penalty if the noise cap contour was exceeded;
 - That (at the very least) there should be a mechanism requiring any breach to trigger a financial contribution to a community fund.

- 5.15 Given that we know of the serious difficulties in terms of compliance with the noise contour and passenger cap limits at Luton Airport, I would invite the Inspectors (if they are minded to recommend that the section 73 Application be granted) to consider a variation of condition 10 which would seek to more effectively control and curtail passenger numbers in the event that the specified noise contours and limits are exceeded. One way of doing so would be to impose some financial sanction on the Applicant in those circumstances.
- 5.16 I have drawn attention to a similar situation in respect of George Best Belfast City Airport (Appendix 3) where the Planning Appeals Commissioners considered that it was appropriate to consider an approach which would impose a sanction or penalty should conditions/obligations be breached.
- 5.17. My overall opinion is that the Applicant has failed to demonstrate why the Section 73 Application, which represents a departure from the LLP and which would result in reduced mitigation of the adverse impacts of the underlying development, should be permitted. On that basis I consider that the section 73 Application should not be granted planning permission.
- 5.18. If, however, the Inspectors are persuaded that planning permission should be granted for the increase in the passenger cap to 19mppa I would urge the Inspectors to consider a different form of words that would be more effective in ensuring that future breaches do not occur without some mechanism to control and/or sanction the operator.