

**Proof of Evidence to Planning Inquiry
concerning the effect of other considerations
on the overall planning balance
and the effect of noise associated with the proposal
on health, quality of life,
and the character of the area.**

Submitted by Andrew Lambourne

**Chair of the Luton and District Association for the Control of Aircraft Noise
(LADACAN)**

**APPLICATION BY LONDON LUTON AIRPORT OPERATIONS LTD
(REF APP/B0230/V/22/3296455)**

**VARIATION OF CONDITIONS RELATING TO EXTENSIONS AND
ALTERATIONS TO THE AIRPORT**

LONDON LUTON AIRPORT, AIRPORT WAY, LUTON

Date: 30th August 2022

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Background

I am Andrew Lambourne, the chair of the Luton and District Association for the Control of Aircraft Noise, a community group which represents people affected by the noise and environmental impacts of Luton Airport.

Since December 2015 I have been a regular and active participant in the Noise and Track Sub-Committee of the London Luton Airport Consultative Committee, on which LADACAN also has a seat. I have participated in Department for Transport Noise Focus Groups; Airspace Change Focus Groups, Community Airspace Management Working Groups and a Community Noise Forum organised by the Applicant; the St Albans City and District Council Airport Working Group; community representative meetings with the CAA Board; meetings with the Independent Commission on Civil Aviation Noise (now disbanded), and am a member of the Airspace Change Organising Group (ACOG) Community Advisory Panel.

I attended the Luton Borough Council Development Control Meetings held in December 2013 to determine 12/01400/FUL and in November and December 2021 to determine 21/00031/VARCON.

I have a First Class BSc (Hons) degree in Electronic Engineering, specialising in Software Engineering, from the University of Southampton, and worked in IT research and development for most of my career. By way of examples, projects in which I have been involved have included design and analysis of reference surveys conducted by the Price Commission; processing of real-time text and data feeds for broadcast information and subtitling services; and development of real-time control systems.

I was elected in 2016 to chair the “Flamstead Future” community project to research and report to Flamstead Parish Council the community sentiment concerning local development proposals. I was elected to serve as a Flamstead Parish Councillor from 2017 to 2019, when I stood down to focus on the Flamstead Heritage Project which I directed from its inception in 2017 through to completion of restoration works in 2021, raising over £1m to avoid closure of a 12th-century Grade I Listed building.

Glossary

the Airport – London Luton Airport

the LPA – Luton Borough Council, the ultimate owner of the Airport

LLAL - London Luton Airport Limited (since 2021 trading as “Luton Rising”) – the subsidiary company of the LPA, incorporated in May 1986, which owns the Airport on behalf of the LPA and whose Board (during the period 2012-2019) comprised of Members of the Council

the Applicant – London Luton Airport Operations Ltd, a company incorporated in 1998 which was appointed in 1998 to manage the Airport

LLA, LLAOL – synonymous with the Applicant

BAP – Bickerdike Allen Partners, an architecture, acoustics and technology consultancy retained as noise advisers to the Applicant;

the **Concession Agreement** – the agreement dated 20th August 1998 between the LPA, LLAL, LLAOL and London Luton Airport Group Limited, by which LLAOL would manage the Airport

the 2012 Application – the planning application reference 12/001400/FUL on the LPA Planning Portal, which was permitted subject to Conditions which the Application seeks to vary

the Application – the planning application reference 21/00031/VARCON on the LPA Planning Portal, which is the subject of this Inquiry

LLACC – the London Luton Airport Consultative Committee operating under the Department for Transport Guidelines for Airport Consultative Committees April 2014

NTSC – the Noise and Track Sub-Committee of the LLACC

mppa – million passengers per annum (a measure of airport throughput or capacity)

noise contour – unless otherwise specified in the context, a 92-day average Summer day or night plot on a map which shows lines joining areas enclosing at or above a specified level of noise impact, where each contour line is attributed a noise impact level measured or calculated typically over a 16 hour (day) or 8 hour (night) period and expressed in decibels (dB) LAeq, and encloses an area on the map normally expressed in square kilometres (km²)

S106 Agreement – the agreement entitled ‘Section 106 Town and Country Planning Act 1990 (as amended) Re London Luton Airport, Airport Way, Luton’, 9th October 2017, between the Applicant, the LPA, LLAL and the Royal Bank of Scotland, relating to 12/01400/FUL (CD8.42)

LGA - Local Government Association

Causes and effects of non-permitted development of Luton Airport

1. Introduction

1.1 Uncontrolled growth

1. From the perspective of people living in local communities affected by the undisputed growth in the noise and environmental impacts of Luton Airport since 2012 (when options for increasing its capacity by some 9mppa were consulted on), the planning system has failed.
2. The 2012 Application received permission for controlled and balanced growth: increasing noise to be mitigated by gradual fleet modernisation; increased throughput gradually adding 18 million more passenger journeys (to and fro) to an already crowded surface transport infrastructure; and a gradual increase in numbers of flights by some 40%, all over a 15-year period to 2028.
3. Those like me who attended the December 2013 Development Management Committee heard all the voting Councillors in their summing up say (as if scripted) how concerned they were about the heavy environmental impacts but that they had confidence in the conditions and mitigations.
4. The reality, as I shall show, has been very far from the expectation which was set. Uncontrolled, financially-incentivised and demand-led growth of throughput at more than twice the balanced rate led predictably and inevitably to a breach of noise planning conditions within just four years. The passenger cap was reached two years later, nine years ahead of the schedule presented and agreed as the basis for the 2012 Application and permission. Such a rate of growth of throughput disregarded the 2012 environmental impact assessment and the fully justified carefully crafted conditions and obligations of the planning permission.
5. This accelerated growth was set back by the restrictions put in place during the COVID pandemic, but has now resumed. No evidence has been provided of effective means of control being used or even being available, and the option to operate within the existing planning conditions has not been evaluated. The long overdue strategy for long-term noise reduction available for review, so there cannot be confidence in any commitments regarding long term noise contour limits.
6. Those who opposed the 2012 Application on noise and environmental grounds, concerned about its threats to health, quality of life, climate and the nature and character of this essentially rural area, have since – quite understandably – been joined by many more who now feel betrayed by the Applicant and the LPA, who are jointly responsible for overseeing and controlling the impacts of the Airport. More local groups opposing further expansion of Luton Airport exist now than ever before, more people have expressed their opposition on the LPA planning portal than ever before, and the other Joint Local Authorities have made their opposition clear in representation.

7. LADACAN is not a campaign to close Luton Airport, but it is a community group representing people who feel utterly powerless in the face of a powerful, noisy and polluting industry which generates significant amounts of money for an airport owner that has consistently sought to drive that revenue upwards as rapidly as possible.

1.2 Pressure for expansion

8. We have witnessed over 15 years the continual pressure from LLAL for faster, greater expansion. Substantial sums of public money fund its investments in and applications for facilitating works, as well as preparation of consultation documents for DCO-scale airport business development based *inter alia* on discussions with airlines. The LLAL board (many Members of the LPA) and its Officers (many Officers of the LPA) would seem to be unqualified to lead or commission such discussions or projects under the terms of the Airport Act 1986. And (apart from determination of the proposed DCO) the LPA which owns the airport and benefits from the concession revenue, determines these facilitating applications.
9. Whilst on the face of it this is not improper, it causes mistrust. Where these actions appear to stray over the line set by the Airports Act 1986 is if they amount to management of an airport by proxy through financial incentive, commercial pressure or threat of sanction, by a company board not meeting the criteria set out in the Act for necessary qualification to manage an airport.
10. Concerns are shared by neighbouring local authorities, and echoed by external auditors. Ernst & Young has not (to date) signed off the LPA's accounts for 2018-19 or any subsequent year, and documented its concern over a lack of transparency in decision-making on airport investment. PriceWaterhouse Coopers recently resigned as auditors to LLAL after a disagreement over the valuation of its assets and capital projects. That these assets were funded by public money borrowed from the LPA or generated by Airport Concession revenues, for projects decided by Members and Officers of the LPA acting in the role of airport company directors under the veil of corporate secrecy, and therefore not open to public scrutiny, causes disquiet.

1.3 Importance of independent review

11. This Inquiry is the first time for 17 years (when the High Court ruled against a second runway) that any independent light has been shone on a Luton Airport planning decision – including the facilitating decisions already taken to pave the way for LLAL's significant further expansion DCO.
12. My evidence underpins a strong call for genuine rather than on-paper commitment to achieving and maintaining local planning balance, overseen and governed by the high standards of probity which in 2019 MHCLG assured us the government expects from local planning authorities under Localism.

13. The conflict between the dependence of the LPA on revenue from the Airport (revenue which grows in proportion to its passenger throughput, along with its noise and emissions) and its role in setting and potentially enforcing the Airport's planning conditions and obligations has caused and still causes deep concern. Guidance from the Committee for Standards in Public Life is that conflicts of interest caused by the existence of commercial companies of planning authorities should be resolved so that they are genuinely at arm's length.
14. As I review the incentives, actions, lack of actions, and agreements which led to serious breaches of noise control conditions occurring within four years of development permission being agreed, my evidence demonstrates that these concerns are well founded.
15. During the five years since the first breach, local communities have not seen effective actions to remedy the cause and bring the airport operation back within its planning limits. During the years while the breaches increased in magnitude, the focus of the Applicant was on paving the way for a transitional arrangement by way of retrospective application to the LPA (also one of the parties to the Luton Airport growth incentivisation scheme) to legitimise the breach.
16. After three and a half years of repeated attempts via poorly constructed planning applications and some six rounds of consultation to date, this Inquiry now has to navigate an opaque and apparently obfuscated set of overlaid documents which require a six-page roadmap to enable people even to appreciate what applies and what has been superseded - and even then, updates to information are scattered in responses to Regulation 25 requests rather than being in context.
17. Our greatest concern is that, regardless of the outcome of this Inquiry, unless some fundamental and fully effective changes are made to the governance, oversight and development control of passenger throughput and noise at Luton Airport, demand-led breaches will just happen again.
18. My evidence shows why this is not a planning application which is straightforward to determine simply by weighing benefits versus harms. I set out a well-documented history indicating that the breach of conditions was as a result of over-rapid growth in passenger throughput. The pressure of financial incentivisation and corporate performance targeting, the ignoring of clear trends and environmental reports, a demand-led business growth culture, and an apparent lack of effective processes or indeed will to control and mitigate the growing noise and environmental impacts of Luton Airport are the most likely causes of breach, not French air traffic controllers. Therefore it would clearly be pointless to affirm the current conditions or to impose new conditions without also addressing these endemic issues.

2) Ownership and management

19. In this section I provide information which shows that:

- The Airports Act 1986 requires Councils to transfer airport ownership to a separate company, ensuring that such a company is either qualified to manage the airport or appoints a suitably qualified third party to manage it
- The LPA responded by forming LLAL which took on ownership and management of the Airport in 1987
- In 1998, LLAOL was formed as part of a PFI project to achieve new investment, took on the LLAL airport management staff, and was awarded a 30-year operating concession by LLAL

20. Sections 13 and 14 of the Airports Act 1986¹ made provision for the Secretary of State to require councils to divest their ownership of airports with a turnover of over £1 million. With regard to management of such an airport, Section 17(1) of the Airports Act 1986 states that:

“(1) Subject to subsection (2), it shall be the duty of the controlling authority of a public airport company to exercise their control over the company so as to ensure that at least three of the directors of the company, or at least one-quarter of their number (whichever is less), are full-time employees of the company who are suitably qualified to act as directors of the company by virtue of their experience in airport management”

21. Section 17(2) specifies two mutually exclusive airport management models: either management by a public airport company meeting the qualification test of Section 17(1), or management by an independent and suitably qualified third party:

“(2) Where at any time it appears to the Secretary of State—

(a) that a public airport company has made arrangements for the management of the airport operated by it to be carried on otherwise than through its officers or employees, and

(b) that any such arrangements are adequate to secure that those participating in the management of the airport under the arrangements are suitably qualified to do so by virtue of their experience in airport management,

the Secretary of State may direct that subsection (1) shall not apply in relation to that company.”

22. The LPA complied with the requirement to transfer ownership: LLAL was incorporated May 1986 and began trading on 1 April 1987 as a wholly owned subsidiary of the LPA. Ownership of the

¹ CD10.02 ‘Airports Act 1986’, 1986, and as amended

airport was transferred from the LPA to LLAL on that date² and LLAL continued to manage the Airport until 1998.

23. In August 1998, as part of a Public/Private Finance Initiative to achieve investment in the Airport, three executive directors of LLAL became directors of a new company, London Luton Airport Operations Limited (the Applicant)³ and a 30-year operating concession agreement was reached whereby the Applicant assumed responsibility for the management of the airport⁴.

LLAL's 1999 Report and Accounts⁵ confirm this arrangement, which appears to accord with the second management option evidence in paragraph 21 above, ie management by an independent and suitably qualified third party:

"Under the terms of this contract LLAOL was granted a concession to operate the airport for a period of 30 years ('the concession period') and a lease over the company's land and buildings. In return LLAOL undertook to pay an annual concession fee to the company and, subject to the continuing growth of passenger numbers, fund an extensive capital investment programme."

3) Background to the 2012 Application

24. In this section I provide information which shows that:

- Capacity expansion at the Airport is a strategic objective of the LPA's Executive and LLAL
- LLAL put forward detailed plans in 2012 to increase capacity to 18mppa by 2025/28
- The Applicant responded with a less ambitious and lower cost scheme to expand to 16mppa
- The Executive required the Applicant to achieve 18mppa or risk concession termination
- The Applicant applied for permission to increase capacity to 18mppa based on LLAL's plans
- The timeframe for the expansion to 18mppa was a fifteen-year period to 2028

25. In July 2012 the LPA's Executive was recommended by the Company Secretary of LLAL (who was also the LPA's Director of Commercial and Transformational Services) to agree a report⁶ ("the Report") recommending extension of the Airport Concession Agreement to 31st March 2031. The

² 'London International Airport Limited Annual Report Accounts 1988', (filed under London Luton Airport Limited on Companies House website), pp 8

³ 'London Luton Airport Operations Limited Annual Report And Financial Statements, Period Ended 31 March 1999', Companies House website, pp 8

⁴ CD8.47 'Fully redacted Concession Agreement relating to London Luton Airport', the LPA, LLAL, LLAOL, London Luton Airport Group Limited, 20 August 1998

⁵ 'London Luton Airport Limited Financial Statements Y/E 31 March 1999', Companies House website, pp 11

⁶ CD13.54 'LBC Executive Resolution', LPA, July 2012

reason given was *“To achieve expansion at the Airport to play a more significant role in Luton’s economic growth”*.

The Report acknowledges in its section 2 that:

“Passenger capacity, and its effect on the sustainability and competitiveness of the airport, has a significant impact on a range of benefits to the people of Luton, including the use of Gift Aid to support the charitable objectives of local organisations, and contributions to reducing Council Tax through payments for services, and shareholder dividends made, to Luton Borough Council.”

26. The Report goes on in its section 3 to say:

*“LLAL has a long term vision of: ...
an efficient airport, optimised within its existing boundary and using its existing runway, with capacity for 18 million passengers per annum (mppa) by 2025/28”*

In its section 4 the Report acknowledges proposals by the Applicant to invest £63m to increase operational capacity to 16mppa by 2028 on a demand-led basis, but notes that LLAL’s advisers considered the works would only deliver 13.5mppa while passenger growth in the South East would lead to demand at the Airport exceeding 18mppa over that timeframe, and that LLAL’s board had on 14th May 2012 rejected the Applicant’s proposal as *“unlikely to meet the long-term objectives of their vision for the development of the airport”*.

27. In its section 5, the Report notes that the extant Concession Agreement did not compel the Applicant to invest, and that LLAL had investigated other procurement routes to achieve a more significant role for the Airport in the Luton economy, but that would require termination of the Concession Agreement for which a limited decision window was available.

28. In its section 8 the Report states that LLAL had prepared a design for an 18mppa airport, and its programme “futureLuToN:Optimisation” proposed a new concession to secure development to 18mppa by 2025-2028 and a long-term vision for further expansion. The Report’s alternative option was to extend the Concession Agreement and require the Applicant *“to submit a planning application that would be suitable to meet LLAL’s objectives, be fully consulted upon, and which would be in line with national, regional and local, planning and aviation policy frameworks.”* This option was adopted, as the decision sheet⁷ and the 2014 accounts of LLAL confirm:

In August 2012 a supplemental agreement to the concession contract was reached between LLAL and LLAOL. This agreement commits the operators to undertake a significant programme of development works to increase the Airport’s capacity to handle throughput of up to 18 million passengers per year, in return for an extension of the Concession Period to March 31st 2031. There have been no other alterations to the concession contract.

⁷ CD13.53 ‘LBC Executive decision sheet’, LPA, July 2012

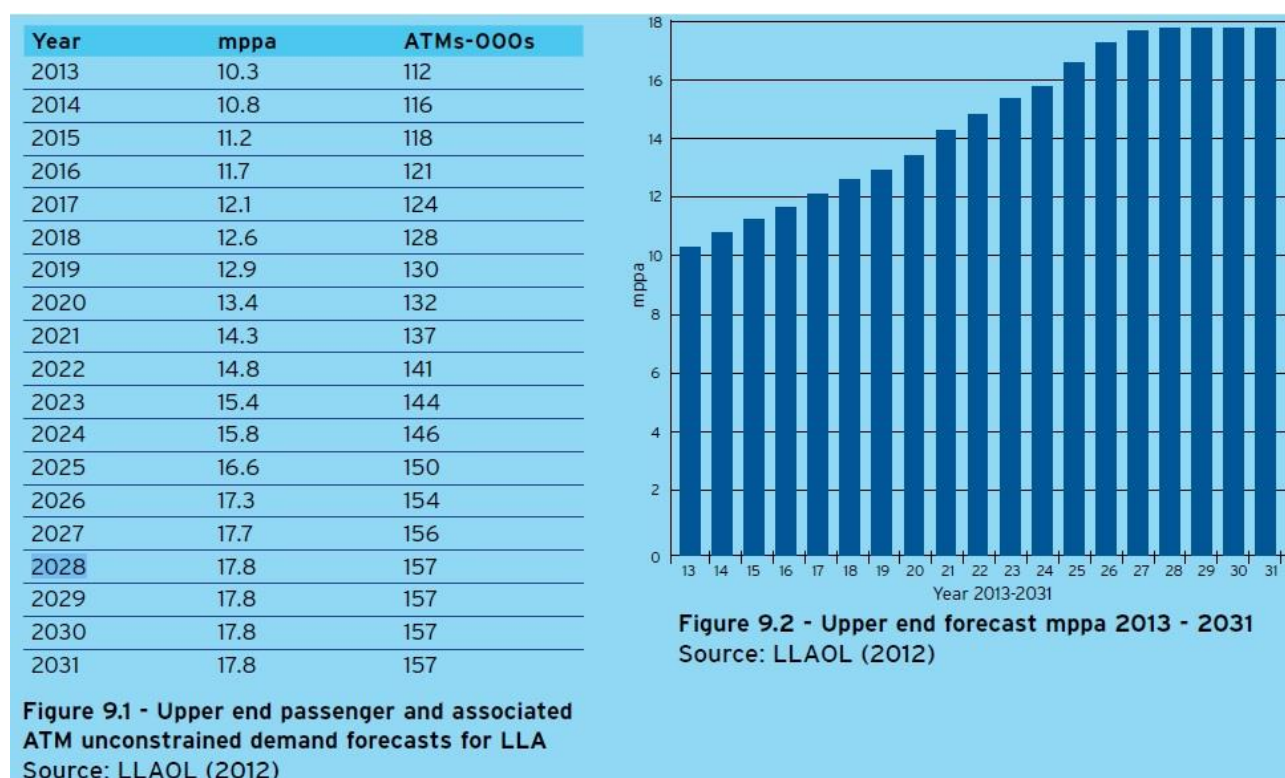
29. The Goals and Objectives sections 17 and 18 of the Report concludes by saying:

“In short, the objectives adopted by the LLAL Board were: to secure significant investment in developing the airport, to maintain and increase revenue to LLAL through increasing passenger numbers, to avoid taking on financial and operational risk in securing that development, and to improve the ability of the airport owner to influence the future of the airport.” (our underline)

30. In accordance with that agreement, the Applicant applied for permission for works to increase capacity to 18mppa, and its Revised Masterplan 2012⁸ (which strengthened the noise control provisions) acknowledges in Section 1.5 both the accord reached with LLAL and the agreement of both parties on the works (based on LLAL’s plan) and the timeframe:

“LLAOL and LLAL have subsequently reviewed their respective proposals and agreed that a single planning application should be prepared and submitted by LLAOL. Both parties have agreed that the planning application should seek consent to improve passenger facilities and enable the Airport to accommodate 18 mppa by 2031.” (our underline)

31. Section 9.10 of the Revised Masterplan confirmed upper end growth forecasts along with the associated timeframe (ATMs meaning Air Transport Movements, ie flights):



Permission for this development was agreed at a planning meeting in December 2013.

⁸ CD8.37 ‘Masterplan 2012’, London Luton Airport Operations Ltd, Sep 2012

4) Essential planning controls

32. In this section I provide information which shows that:

- The 2012 Application was granted in light of comprehensive evaluation of environmental impacts and the means of mitigation and control
- The condition limiting noise contours is a primary mechanism of securing noise mitigation
- The passenger cap is also a key mechanism in ensuring (inter alia) noise control

33. During consultation on the 2012 Application, the relationship between numbers of passengers and aircraft movements, fleet modernisation and noise was set out in documents including:

- a comprehensive Environmental Statement⁹;
- the associated noise reports¹⁰; and
- the Planning Officer's report and recommendation¹¹.

The Planning Officer's report contained several noise control caveats including in the first bullet point of its Paragraph 110:

"Controlling the noise impact to the levels indicated for 2028 requires that a substantial part of the airline fleet is changed to modern, low noise variants of types currently operating. The primary mechanism put forward by the applicant for ensuring that this will happen is by way of a condition limiting the extent of key daytime and night time aggregated noise contours."

34. Condition 10 (as renumbered after the discharge of noise conditions) includes the following provision:

"The development shall be operated in accordance with the Noise report approved on 2 March 2015 (ref: 14/01519/DOC), including providing details of forecast aircraft movements and consequential noise contours as set out in that report."

35. As shown in paragraph 31 above, the Revised Masterplan¹² indicated an upper-end trajectory of broadly linear growth in passenger numbers and aircraft movements (a trajectory reiterated by the Applicant in 2014¹³) at a rate designed to provide sufficient time for fleet modernisation.

⁹ CD6.02 2012 Application Environmental Statement and its associated appendices

¹⁰ See for example CD13.14 Bickerdike Allen Appendix H Noise extract, Dec 2012

¹¹ CD09.08 Development Control Committee Report, Dec 2013

¹² CD8.37 LLA Revised Masterplan, 2012, and associated 2012 Application documents

¹³ CD8.29 LLA RNAV consultation extract, April 2014

36. The difference between the potential of ‘capacity’ and the reality of ‘throughput’ was clarified in an Opinion¹⁴ issued in advance of the planning meeting for the 2012 Application, which made it clear in the context of an argument concerning whether the ‘potential’ or the ‘declared’ capacity delivered by the proposed works was what counted in determining whether the 2012 Application was an NSIP or not. In relation to the passenger cap condition, the Opinion states:

“The whole purpose of a planning condition of this sort is to limit what otherwise might be capable of being provided and ensure that it is not provided.

Therefore in those circumstances, not only does the condition control and limit the traffic, noise and other environmental and planning effects of the development, the condition also has the effect of ensuring that the proposed airport-related development is not NSIP.” (our underline)

This makes it clear that the passenger cap condition is an integral part of controlling noise and other environmental impacts.

37. The appropriateness of the noise contour values, and the importance of fleet modernisation, was confirmed by the Applicant’s agent prior to determination of the 2012 Application¹⁵, including:

“The measures for noise mitigation proposed by LLAOL are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.”

38. The importance of the specified levels of noise contours was also established in correspondence ahead of the planning meeting for the 2012 Application, where it was argued and agreed that the actual levels of noise in 1999 would carry forward as the levels not to be exceeded to accord with the Local Plan¹⁶.

5) Monitoring and reporting obligations

39. In this section I provide information which shows that:

- The S106 agreement requires reporting in order to make the conditioned noise impacts clear
- Such reporting was regularly provided by the Applicant to the LPA during the period 2014-2019
- All parties had adequate visibility of the trends in relevant noise and environmental indicators

¹⁴ CD8.18 ‘John Steel QC legal opinion’, John Steel QC, 39 Essex Chambers, Nov 2013

¹⁵ CD13.25 ‘Appendix 6 to London Luton Airport application - Terence O'Rourke letter – noise’, Oct 2013

¹⁶ CD13.30 ‘LBC letter to Richard Buxton’, LPA, Dec 2013

- The LPA had an implied obligation to monitor performance against the S106 agreement
- The Applicant had a legal responsibility to operate the Airport in accordance with the S106

40. The Noise Report¹⁷ submitted on behalf of the Applicant during the 2014 Discharge of Conditions 11-14 (original numbering), and bound into the S106 Agreement, states:

“From the 1st January 2014 forecast aircraft movements and consequential noise contours (Day, Night and Quota Periods) for the forthcoming calendar year shall be reported on the 1st December each year to the Local Planning Authority, which shall utilise the standard 92 day summer contour.”

41. Consequential noise contour information is provided to the Applicant by its noise advisers BAP in annual reports of previous and forecast 92-day Summer noise contour areas each November¹⁸.
42. Reporting of numbers of flights, passengers, current year actual and next year forecast noise contours and contour exceedances is provided by the Applicant to the LPA as part of its Annual Monitoring Report, examples of which are provided for the period between 2017 and 2019¹⁹.
43. The Applicant’s Quarterly Environment Reports contain Key Performance Indicators required for planning control monitoring²⁰, and these are reviewed by LLACC and NTSC and available online.
44. Section 4(d) of the S106 Agreement contains a clear Obligation on the Applicant *“not to carry out the Development or conduct the operation of the Airport otherwise than in accordance with this Agreement”*, the only exception being *“in accordance with a planning permission granted after the date of this Agreement”*. To me this indicates that such a planning permission must predate Development not permitted by the original permission.

45. The S106 Agreement obliges the Applicant to pay for monitoring, and by reverse obligation the LPA’s Director of Planning to perform monitoring, of adherence to terms of the Agreement:

“4. The Planning Obligations – Operator: ...

4.1(c) to pay to the Council on the first Working Day following 1 January 2017 and on the first Working Day following the first of each subsequent January (or in either case, if later, within 28 days of the date of receipt by the Operator of an invoice for the same from the Council) the sum of £15,000 (fifteen thousand pounds) in respect of the monitoring by the Director of Planning of the terms of this Agreement”.

¹⁷ CD13.47 ‘Noise Report’, BAP, Dec 2014

¹⁸ For example CD8.07, CD13.15, CD13.18, CD13.22 ‘Summer noise contour reports’, BAP, Nov 2016-Nov 2019

¹⁹ See CD8.23 – CD8.26, ‘LLA Annual Monitoring Report’, LLA, 2016-2019

²⁰ LLA website archive can be found by searching online “Luton Airport Quarterly Monitoring Reports”

46. In 2019 LADACAN met and corresponded with the LPA's then Director of Place and Infrastructure to identify the mechanism for and effectiveness of this monitoring, but it appeared²¹ that there was no formal process in place. In July 2020 and October 2020 respectively the LPA's Overview and Scrutiny Board and its Executive reviewed the Applicant's 2019 Annual Monitoring Report, but I have not seen evidence of such scrutiny prior to that date, and although we asked the LPA to disclose such evidence, none has been provided.

6) Failure to control noise

47. In this section I provide information which shows that:

- The S106 includes a commitment on the Applicant to identify and avoid adverse noise trends
- The Applicant's function includes controlling the rate of release of aircraft slots
- The Applicant's noise adviser was on hand to assist as required to achieve compliance
- There is an industry-standard ICAO 4-point plan indicating how noise can be controlled
- The LPA made clear that the Applicant is responsible for bringing noise back under control
- The Applicant has failed to control noise or to indicate how noise will be reduced longer term

48. Section 3.2 headed "Noise Contouring" in the Noise Report referred to in paragraph 40 above confirms the comprehensive contour reporting to be sent annually to the LPA and concludes: *"With respect to 'Trends' and 'relevant features' identified in the annual reports, LLAOL will study any adverse trends or features and seek to establish causes, and what actions need to be taken by operators or LLAOL to avoid repetition. The actions required by operators could address detailed operational decisions which would be resolved at the regular "Flight Ops" Committee meetings."* (our underline)

49. I am aware that "Flight Ops" meetings are meetings of the Airport's FLOPSC (Flight Operations Sub Committee), where the Applicant meets airline operational representatives (including base captains and chief pilots) to discuss operational issues. A feedback path therefore exists.

50. Airports submit advance seasonal capacity declarations²² to the independent slot coordinator Airport Coordination Ltd (ACL), which allocates slots in accordance with best practice as set out in worldwide guidance²³.

²¹ CD8.14 'Email LBC to LADACAN re Luton Airport scrutiny committee', Laura Church, Feb 2019

²² See CD13.32-CD13.39, 'LLA Summer season capacity declaration', LLA, for the period 2012-2019

²³ CD8.43, 'Worldwide Slot Guidelines', Airports Council International, International Air Transport Association, Worldwide Airport Coordinators Group, Apr 2020

51. According to the worldwide guidance, responsibility for capacity declarations sits with the airport managing body²⁴. Yet the Planning Statement²⁵ accompanying the Application proposes as one of its mitigation measures in section 4 in response to the 2017 breach:

“Increased frequency and detailed cooperation between the Flight Operations Department and the Business Development Department in LLAOL.

4.3.27 This ensures that the Flight Operations Department works closely with the Business Development Department to ensure that passenger growth is managed more effectively in line with noise limitations.”

I would have expected directors of Applicant, a professional airport operating company, knowing it was subject to binding planning conditions, would have ensured effective communication was occurring between key departments, without apparently needing to introduce it in response to breaches of condition as the Application admits. This suggests lack of professionalism.

52. The terms of reference between BAP as Supplier of acoustics consultancy and the Applicant as its Customer from December 2017 (we requested disclosure of the terms of reference applicable prior to that date but they were not provided) include²⁶:

The Supplier shall also support the Customer in its continual work to comply with the planning conditions relating to noise issued in 2014 with the planning reference 12/01400/FUL, providing guidance and support wherever necessary.

Given this, and in light of the growth trajectory and rate of growth of noise contour areas, it would be reasonable to expect intervention or support provided by the noise consultant to the Applicant in its *“continual work to comply with the planning conditions relating to noise issued in 2014”*, particularly given the long-running breaches of those conditions since 2017.

53. I requested and reviewed BAP reports from the material period²⁷ and they clearly document the increasing noise contour areas up to and through the breaches, but the only evidence I saw of any “support” is a draft Transitional Arrangement report²⁸ which proposes that the solution to the breach of noise planning conditions would be to apply to increase them.

54. I did not find in the BAP reports any mention of the “ICAO balanced approach” promoted by the International Civil Aviation Organisation to manage aircraft noise²⁹ which is prefaced on the ICAO

²⁴ Ibid page 26 para 6.1.1 and 6.2.1

²⁵ CD1.07 ‘Planning Statement’, Wood, Jan 2021

²⁶ CD13.41 ‘Scope of services as part of the agreement between Bickerdike Allen Partners LLP for consultancy services’, disclosed by Wood, dated Dec 2017

²⁷ See CD8.06 to CD8.08 inclusive, CD13.15 to CD13.23 inclusive, CD13.48

²⁸ CD13.48 ‘A9501-R06D-DC Draft transitional arrangements’, BAP, Jul 2017

²⁹ Search online “ICAO balanced approach”

website with this statement:

“Aircraft noise is the most significant cause of adverse community reaction related to the operation and expansion of airports. This is expected to remain the case in most regions of the world for the foreseeable future. Limiting or reducing the number of people affected by significant aircraft noise is therefore one of ICAO's main priorities and one of the Organization's key environmental goals.” (Retrieved on 24 August 2022).

55. The four elements of the ICAO balanced approach are:

- reduction at source (quieter aircraft);
- land-use planning and management;
- noise abatement operational procedures (optimising how aircraft are flown and the routes they follow to limit the noise impacts); and
- and operating restrictions (preventing certain (noisier) types of aircraft from flying either at all or at certain times)

56. In light of the noise contour breach in 2017, after a meeting with other concerned authorities, the LPA wrote to the Applicant³⁰ requiring a number of actions:

“Accordingly could you provide a detailed Action Plan setting out how the Airport Operator proposes to remedy the breach of this condition. Specifically the LPA requires the Action Plan to set out, in the short term, how and when the breach of condition can be remedied, together with a timetable for implementation of actions to address the breach and mitigate any harm. Over the longer term the Action Plan should set out the strategy for the future. Although I note that the period specified in the condition for the production of a strategy was ‘within five years of the commencement of development’ (i.e. by 1 January 2021), at that time it was not anticipated that the airport would grow so rapidly. With the breach of the condition arising from the rapid growth of the airport, it is imperative that the production of this strategy be brought forward.” (Our underlining)

57. The Applicant responded with a plan for modest restrictions which it sent to its airline customers the same month³¹, but by 2019 it was clear this plan was inadequate since both the day and night noise contour areas had increased, and the day noise contour had also been breached. There is no evidence that this Plan was validated by BAP using contour modelling to verify its adequacy. The LPA wrote again³² in unambiguous terms:

³⁰ CD8.33 ‘Letter LBC to LLAOL re breach’, Laura Church LBC, Feb 2018

³¹ CD8.35 ‘Letter LLA re noise restrictions’, LLAOL, Feb 2018

³² CD8.34 ‘Letter LBC to LLAOL re breach’, Laura Church LBC, Nov 2019

"In February 2018 the Local Planning Authority (LPA) wrote to LLAOL in relation to the breach of planning condition 10 ... and we sought to understand ... the mitigation plan that LLAOL proposed to introduce in order to bring the airport operation back in line with the requirements of the planning condition."

"In March 2018 LLAOL responded by providing a copy of the steps that were to be implemented for summer 2018 to address the breach of the night noise contour, together with measures to prevent a breach of the day noise contour. I understand from the information that we received in the last few days ... that the measures have not been successful and that for the summer period in 2019 not only has the night noise contour limit again been breached, but the day noise contour limit has also been exceeded."

"However, we have received today the Bickerdike and Allen Report covering the actual 2019 contours and forecast 2020 contours and that would suggest that the breach of the condition for both day and night time will again occur in 2020 and that, although the night time breach may be less severe than this year, the breach for the day period will be greater than in 2019."

"It would appear to me that the primary reason for the inability to comply with the condition is the increase in aircraft movements, which has taken place at a faster pace than the roll out of the new generation aircraft and consequently the noise level has increased disproportionately. Whilst the airport may seek to incentivise the use of modern quieter aircraft, there is no guarantee that this is going to have a significant effect. It is, therefore, critical that action is taken to address the noise breach which may need to include managing the number of movements."

"I understand that on 1 January 2020 LLAOL will be producing its strategy to show how the area within the 57dB(A) day time contour and the 48dB(A) night time contour can be reduced by 2028, and it may be that your interim approach is to reduce the number of air traffic movements. It would be good to see this strategy in order to be reassured that LLAOL are taking the issue of the noise contours seriously and are seeking to ensure that the local community are not impacted by the negative aspects of the airport's growth." (Our underlining)

58. As matters turned out, the day and night contours for 2020 were reduced below the permitted limits – though not as a result of any action taken by the Applicant, but because of the travel restrictions imposed during the COVID pandemic.
59. The Noise Contour Reduction Strategy, required under planning condition 10 to be delivered by January 2021 for approval by the LPA, but then requested in advance of that (see paragraphs 56 and 57 above), has not yet been finalised and submitted or signed off: its status remains "in abeyance" according to the LPA's consultant Planning Officer in reports to the LLACC. We asked the LPA for information justifying holding this in abeyance but none has been provided.

60. The most recent entry on the Luton planning portal under reference 20/00131/DOC is a letter from the Applicant dated 4 January 2021:

"We are now working on a new version of the Noise Contour Reduction strategy... We will submit to (sic) completed strategy to Luton Borough Council in the near future."

61. In the light of the information documented in this section, I doubt the Applicant's willingness or capability to remedy the breaches by taking the steps necessary to operate the Airport within its passenger cap and noise contour limits. A firm request for action to remedy the first breach was met with an Action Plan which self-evidently tinkered around the edges and did not appear to have been validated. I find no evidence that the Applicant was willing or able to reduce its noise contours to the extent necessary to operate within its planning limits by using all the options of the ICAO balanced approach including reducing numbers of flights, nor apparently did it intend to restrain passenger throughput below 18mppa given no mechanism was put in place to do so.

62. As the written representation to PINS from the Joint Local Authorities reiterates:

"The (Hertfordshire) County Council has an in-principle objection to growth proposals at LLA whose origins are founded in mismanagement of operations since planning permission was granted in 2014 for the Airport to grow to 18 mppa." (PDF p22); and

"The requirement to reduce noise contours is a critical requirement imposed on the Airport and is entirely consistent with Government expectation that 'noise caps ... provide future certainty over noise levels to communities'. Unfortunately, historic and ongoing mismanagement of growth at the Airport has served to ensure that the 'certainty' expected by Government is exactly what communities adversely impacted by aircraft noise associated with the Airport have not experienced." (PDF p205)

7) Growth Incentive Scheme

63. In this section I provide information which shows that:

- A Growth Incentive Scheme ("GIS") was signed between the LPA, the Applicant and LLAL in January 2014, one month after the LPA agreed the 2012 Application
- The GIS financially incentivised airlines to deliver year-on-year passenger number growth
- The GIS was set up by LLAL to encourage passenger growth, but has other influences
- There is no obvious reference to planning conditions or noise controls in the GIS

64. A 2017 Deed of Amendment and Restatement (the Deed) restates with additional clarification a previous Deed of Amendment signed in January 2014 between the Applicant, the LPA and LLAL³³. It describes a Growth Incentive Scheme (GIS) which financially rewards year-on-year growth of passenger throughput at the Airport. The Applicant receives a rebate of part of the Concession fee, which is passed on to airlines meeting tests of “Growth” or “Super Growth” to incentivise year-on-year increases in passenger numbers at Luton. Annex A shows that this incentivisation continued after the breach was forecast, and the highest payment was in the first year of breach. Annex D gives further details. There is no obvious reference to restraint in the GIS.
65. The 2014 Company Accounts of London Luton Airport Ltd³⁴ mention the extended Concession Period; its 2015 Accounts repeat the reference and also describe the subsequent amendment to the Concession Agreement to instantiate the GIS, and confirm its growth-oriented objective: Concession Period to march 31st 2031. The concession agreement was further amended in January 2014 to provide for a scheme to rebate the Concession Fee Rate payable by the airport operator in certain circumstances, in order to encourage passenger growth.
66. I consider it would be unprofessional for an airport operating company already party to a growth incentive scheme to encourage increased throughput, then to sign a Section 106 agreement that prohibits carrying out development or conducting the operation of the airport otherwise than in accordance with defined noise controls; without first checking for potential conflict between the commercial effects of both agreements.
67. Since the GIS resulted in reduced costs for airlines delivering consistent year-on-year growth, it could have effects on the airport business over time:
- 1) Consolidation – airlines benefiting from the reduced costs would have competitive advantage which may favour their growth as opposed to that of an unrewarded competitor, consolidating their position and perhaps reducing diversity in the customer mix (which has potential risks of increasing the dependence of the business on those airlines, and increases the leverage of those airlines over the business)
 - 2) Fleet influence – airlines seeking to achieve the rewards could schedule larger aircraft or more aircraft to add passengers, perhaps by displacing business from elsewhere, which if done before aircraft were modernised would result in increased noise
 - 3) airlines depending on the reduced costs may apply pressure to sustain the scheme.

³³ CD8.12 ‘Deed of Variation’ between the LPA, LLAL, the Applicant and London Luton Airport Group Limited, Aug 2017

³⁴ Available from the Companies House website for company number 02020381

8) Targeting of higher growth rates

68. In this section I provide information which shows that:

- The LPA's Executive Committee and its Overview and Scrutiny Board each regularly review corporate RAG (red, amber, green) performance report across a number of areas
- One such area is Luton Airport passenger numbers, reviewed against annual targets
- Targets were to be agreed in Baseline Review Meetings between the LPA and the Applicant

69. Corporate Performance Reports and Datapacks (CPRs) summarising the LPA's progress against targets in various areas including passenger growth at the Airport were regularly reviewed by the LPA's Executive and its Overview and Scrutiny Board during the breach period from 2016-2019³⁵.

70. The 2016-2017 CPR³⁶ shows under 'Ref 5' on page 2 an annual target of "14.3m London Luton Airport passengers", ie 1mppa more than balanced growth, and the report by Mark Turner (LLAL Customer & Commercial Directorate) on page 8 of that CPR notes:

"Passenger numbers increased by 499,536 (18.2%) in the fourth quarter of the 2016 financial year compared to the equivalent period of 2015, and exceeded the target for the period by 8.9%. London Luton Airport remains the fastest growing airport in the UK, and is increasing its market share of both the London system and UK aviation generally. The rate of growth is acknowledged (by the airport operator and airlines) to the Growth Incentive Scheme introduced and funded by London Luton Airport Limited." (our underlining).

71. We asked Mr Turner (now the LPA's Monitoring Officer and also Executive Director, Governance at LLAL, now trading as Luton Rising) to clarify the position and he replied in a letter to LADACAN (see Annex A) quantifying the targets and the concession fee rebates mentioned above.

72. Both the "modelled" and the "target" values reported on by Luton Rising are significantly larger than the upper end Trajectory (shown by the blue line) which was set out by the Applicant in the 2012 Application (see paragraph 31) and repeated in its community consultation in April 2014³⁷.

73. Mr Turner's letter indicates that the targets were forecasts provided by the Applicant, however the CPRs present them as targets in common with other performance indicators.

74. I see no evidence that the CPRs make any connection between the targeted growth in passenger numbers and its likely effect on the noise control conditions set by the LPA, suggesting that the

³⁵ See CD17.06-CD17.16, example Corporate Performance Reports and Datapacks from the period 2016-2019

³⁶ CD17.10 'CPR Q4 2017 - 3.1 Appendix Ai - Corporate Performance Data Pack for Q4 2016-17', LPA

³⁷ CD8.29 extract from 'Airspace Change Proposal: stakeholder consultation', LLA, Apr 2014

Executive and the Overview and Scrutiny Board were either not aware of the planning conditions governing the balance between throughput growth and fleet modernisation and noise, or simply chose or felt able to ignore it. This raises questions of governance and communication within the LPA to add to similar concerns relating to the Applicant.

75. The figures supplied by Luton Rising and from 2012 Masterplan³⁸ are shown in Chart 1 below:

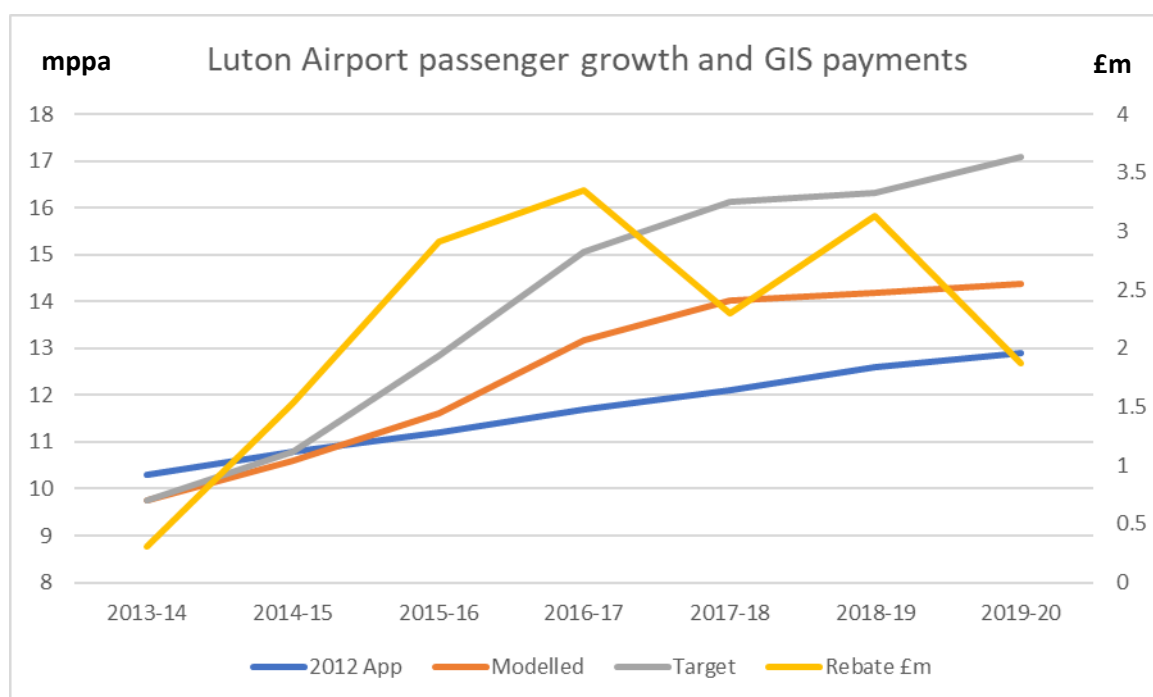


Chart 1: Left-hand axis shows annual throughput in mppa, with the Blue line showing the 2012 Application trajectory; the Orange & Grey lines the LLAL Modelled & Target values. The right-hand axis shows the concession fee rebates in £m, the LLAL figures indicated by the Yellow line.

76. The Deed referred to above in paragraph 64 above states in its paragraph 5.16:

“The parties shall hold a meeting in April of each Applicable Period to discuss and agree the number of Passengers carried by an Airline User in the previous Applicable Period in order to settle the Passenger Threshold for the current Applicable Period, and agree the Incentive Amount to be awarded to all Qualifying Airlines and/or Super Growth Airlines (the ‘Baseline Review Meeting’).”

Since all Parties to the Deed were present, including the Applicant, it is inconceivable that the meetings had “no knowledge” of the impending, actual and worsening breaches of condition.

³⁸ CD8.37 ‘Revised Masterplan’, London Luton Airport Operations Limited, Sep 2012, p34 Figure 9.1

77. We asked the LPA to disclose minutes of the Baseline Review Meetings so that the origin of the Passenger Threshold target values would be clear to the Inquiry, but the request was declined.

78. On the basis of the information presented here, it is clear that the LPA, LLAL and the Applicant had knowingly established a quite different and more rapid growth agenda for the passenger numbers at the Airport than had been presented in the 2012 Application, apparently without considering whether fleet modernisation would be achieved similarly aggressively, or knowing but ignoring the expected and actual rate of modernisation, and apparently without giving due consideration to the predictable impact on the noise contours set by the LPA.

9) Growth in throughput and noise 2014-2019

79. In this section I provide information which shows that:

- The effect of the targeted growth rate on the growth of noise contours was obvious
- No effective control was applied to prevent worsening breaches of condition

80. Using flight movement figures from QERs and AMRs published by the Applicant, I have produced Charts 2 and 3 below showing derived numbers of flights mid-June to mid-September each year during the day and at night (corresponding to the 92-day noise contour calculation periods) and the actual day and night 92-day contour areas calculated by BAP, as used in assessing noise impact against the planning conditions. The red bar shows the condition 10 noise contour limit agreed as part of the permission for the 2012 Application.

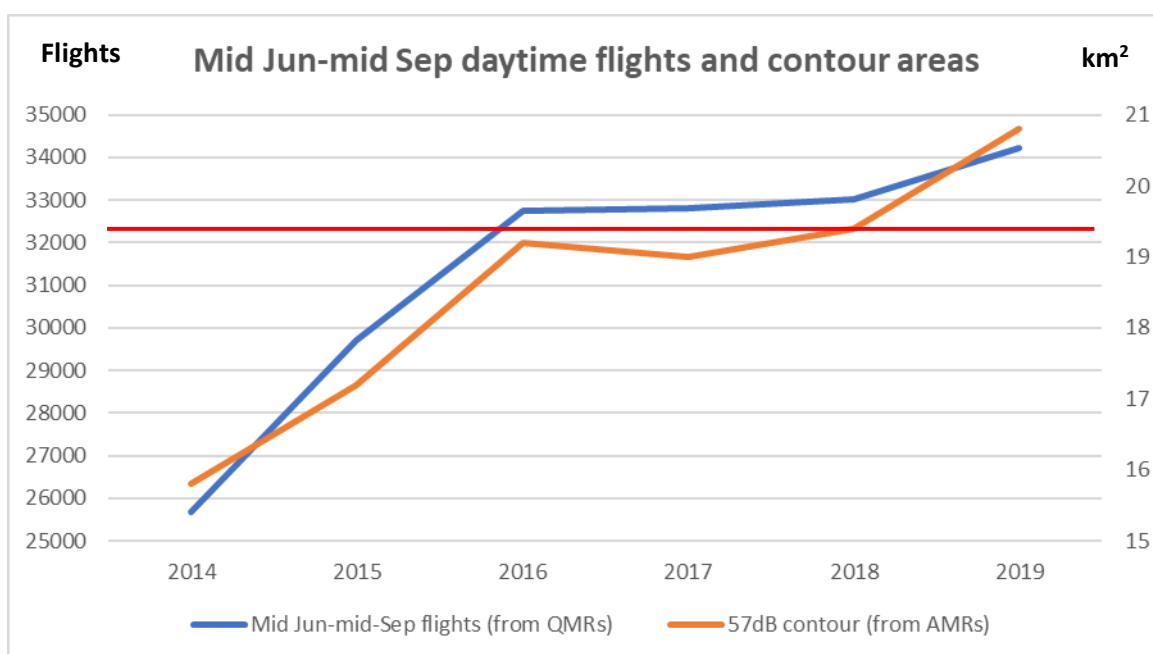


Chart 2: Left hand axis and blue line shows the numbers of daytime flights (derived from QERs); right-hand axis and orange line the actual daytime 57dB LAeq 16h noise contour areas (km²) given in the AMRs, 2014-2019. The red bar shows the daytime noise contour area limit (19.4 km²).

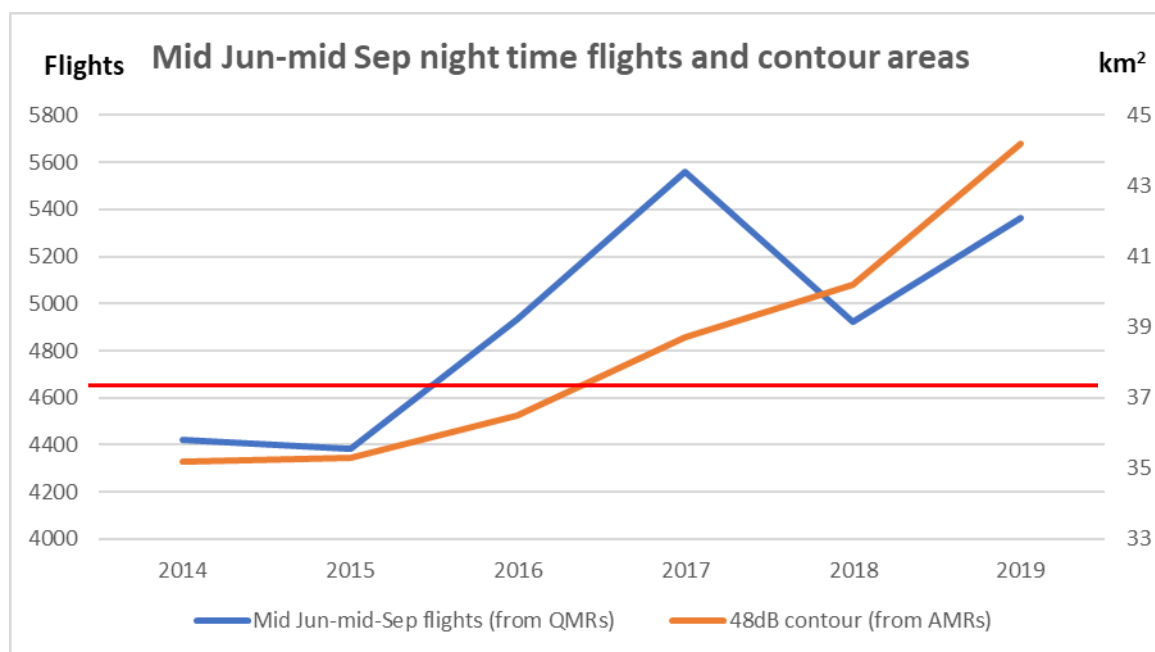


Chart 3: Left hand axis and blue line shows the numbers of night time flights (derived from QERs); right-hand axis and orange line the actual night time 48dB LAeq 8h noise contour areas (km²) given in the AMRs, 2014-2019. The red bar shows the night time noise contour limit (37.2 km²).

81. These charts give an indication of adverse trends which Applicant was committed to monitor (see paragraph 48 above), and the kind of observations which could have been made include:

- Daytime flight numbers grew rapidly in 2014 and 2015 and a foreseeable breach was obvious
- An apparent levelling off in daytime flight numbers occurred in 2017 and 2018
- Night time flight numbers grew rapidly in 2016 and 2017 but fell in 2018
- Numbers and contour area rose again in 2019, suggesting any control was short-lived
- Despite the fall in night flight numbers, the noise contour still rose suggesting noisier aircraft
- Numbers and contour area rose again in 2019, suggesting any control was short-lived

Note that in both cases the Applicant and BAP would have had the precise figures and the trend would have been clear.

82. During the period in which rapid growth of passenger throughput and flights led to breach of the noise contour condition, the LPA's attendance at the regular 3-monthly meetings of the LLACC and NTSC was interrupted, with apologies being tendered to LLACC meetings between July 2017

and April 2018 inclusive; and NTSC meetings between March 2016 and March 2017 inclusive³⁹. This indicates a lack of focus on engagement with the operation of the Airport at a critical time when the accelerated growth in throughput was causing concern, as indicated by the questions by community representatives and responses from the Applicant recorded in NTSC minutes (copies of these NTSC minutes can be found by searching online “Luton Airport LLACC”).

83. NTSC minutes March 2016:

“3.4 LLAOL stated that they were more concerned with the contour rather than the quota because they were growing much more quickly than had been initially planned. In the short term this might become a problem and the Airport had already restricted ad hoc traffic during the coming summer season.”

84. NTSC minutes June 2016:

“2.6 The Chairman advised that there continued to be difficulties with engagement from LBC now they no longer had a dedicated Planning Officer for the airport. The Chairman confirmed that LBC have been contacted about future representation.”

“3.9 The area within the 48 dB(A) noise contour had increased by around 23% compared to the same quarter last year. This was due to the increase in overall movements and the increased proportion of turbofan passenger aircraft, which are generally noisier than business jets and GA aircraft.”

85. NTSC minutes December 2016:

“5.5 LLAOL informed that as part of the planning conditions they were required to submit planning contours for Summer 2016 and Summer 2017. It was felt that some condition limits might be reached earlier than previously thought.”

86. NTSC minutes December 2017:

“LLAOL stated that at ‘previous NTSC meetings we have actively talked about the possibility of coming up against, or even exceeding our noise contour limits, as per planning condition 12. The reason for this is due to our accelerated passenger growth which has outstripped the arrival of the latest, quieter aircraft.’” (our underlining)

This formal explanation to the NTSC in 2017 acknowledges accelerated passenger growth outstripping fleet modernisation as the cause of breach. It is clear that this accelerated growth was premature, since the timeframe for fleet modernisation was known to the Applicant and to its noise adviser BAP in 2012 only to be likely post-2017, as indicated here for example⁴⁰:

³⁹ Search online for “Luton Airport LLACC” to find minutes of previous meetings of LLACC and NTSC

⁴⁰ CD13.45 ‘Noise Assessment Report’, LLAOL, BAP report, Nov 2012

easyJet is making good progress on its technical and commercial evaluation of the next generation of short-haul aircraft technology. As the evaluation advances further, easyJet will bring a proposal to shareholders which will cover both the next generation of deliveries which are likely to be after 2017 and a plan for the bridging period from 2014 to 2017.

87. The trajectory of the accelerated growth in throughput and flights is shown in Chart 4 below, which compares actual data with the upper-end forecasts from the 2012 Application:

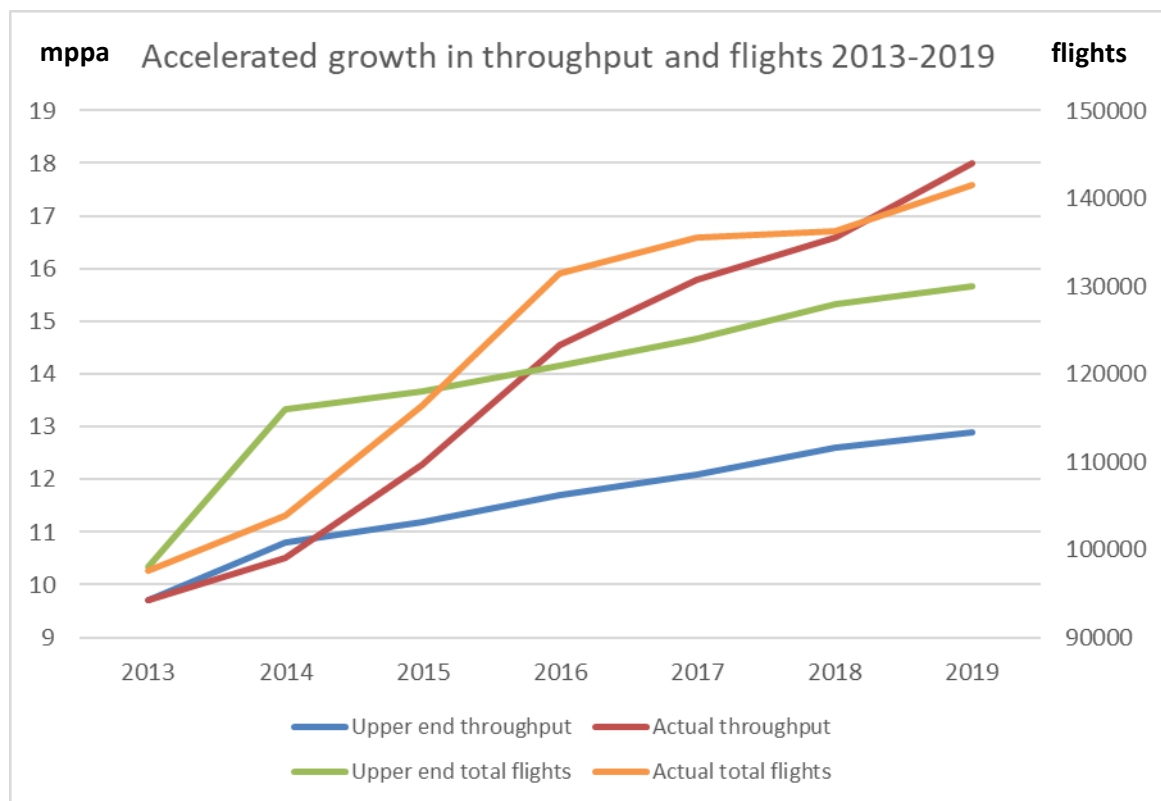


Chart 4: 2012 upper-end forecast throughput (Blue line) vs actual throughput (Red line) mppa; upper-end forecast annual flights (Green line) vs actual annual flights (Orange line). Source: LLA

The chart shows the unmistakable divergence of both “actual” lines from the forecasts on which the planning conditions agreed in December 2013 depended. I regard it is inconceivable that the Applicant as a professional airport operator would have been unaware of the implications. Note that the rate of climb of the Orange line (actual total flights) slows compared to the Red line (actual passengers) from 2017 due to the introduction of larger - and at the time noisier - aircraft.

10) Lack of consistency over timeframes and commitments

88. In this section I provide information which shows that:

- The timeframe portrayed by the Application for achieving 18mppa is misleading
- The Applicant appears to misunderstand how 92-day noise contour assessment works
- The Applicant is apparently confused between “demand-led” and “controlled” growth
- Planning commitments appear to be confused with aspirations

89. LLA press releases in July and August 2015⁴¹ both contained the sentence *“LLA is investing £100 million into the airport to increase annual capacity from 12 million to 18 million by 2026”* which is broadly in line with the timeframe mentioned in the 2012 Application (see Section 3 above).

90. Nevertheless, in its table of responses to consultee queries, the current ES states *“Between 2013 and 2019 passenger numbers at LLA increased from 10.5mppa to 18mppa. This was in line with planning permissions (12/01400/FUL).”*⁴²

91. Since “permissions” is in the plural, the second sentence cannot be regarded as correct. Whilst reaching 18mppa by 2019 looked at in isolation does not technically exceed the passenger cap, the growth trajectory which reached that passenger throughput by 2019 ahead of the required mitigation by fleet modernisation had exceeded the noise contour conditions, and exceedance of planning permission limits was confirmed in the Applicant’s 2019 Annual Monitoring Report⁴³.

92. In its Planning Statement, the ES states *“Data from the noise monitoring that LLAOL carry out (and published as part of LLAOL’s annual monitoring reports) revealed that the contours as set in Condition 10 were exceeded since 2017 but only in the summer.”*

This indicates a misunderstanding of the operation of noise contour conditions: the Applicant’s Annual Monitoring Report 2019 referred to above confirms that the planning limit applies to the 92-day Summer period, as does the wording of condition 10, so the limit would by definition only ever be exceeded in the summer. Hence *“but only in the summer”* is meaningless.

93. The Environmental Impact Assessment states⁴⁴ with reference to the 2012 Application:

“3.3.16 The original noise modelling only took into account the effects of modernisation with respect to the assessment in 2028, by which time it was assumed that the resident airlines would

⁴¹ CD17.19 and CD17.18, ‘LLA press releases’, Jul and Aug 2015

⁴² CD4.10 ‘Table providing clarification on issues’, Wood, Aug 2020, page 20

⁴³ CD8.26 ‘Annual Monitoring Report 2019, LLA, page 35

⁴⁴ CD1.09 ‘Volume 2 Environmental Statement’, Wood, Jan 2021

have acquired all of the ordered NEO and MAX aircraft. As such, little or no headroom was included for unforeseen circumstances outside of the control of the operator of LLA."

The Noise Assessment Report referenced by paragraph 86 does perform a fully comprehensive assessment of a number of scenarios including partial fleet modernisation. As for headroom, one way to allow for unforeseen circumstances is, as agreed by Luton Rising's Noise Envelope Design Group (NEDG)⁴⁵ to set a threshold sufficiently below the noise contour limit which when passed triggers corrective action:

"6.2.7 ... The validation exercise was recommended by the NEDG to provide a robust and transparent noise modelling methodology and is an approved practice."

"6.2.8 ... the noise contour outputs from AEDT would be used to define noise contour limits and thresholds and will supersede the existing contour limits based on INM."

94. The Environmental Impact Assessment for the Application also states⁴⁶:

"1.3.1 ... This adjustment [to the wording of Condition 10] is required for the Airport to reflect what has been a slower than anticipated introduction by airlines of the next generation of quieter aircraft. The modernisation of fleets by airlines has not kept pace with the unexpectedly steep rise in passenger demand over the same period." (our underlining)

95. A similar point is made elsewhere in the Environmental Impact Assessment⁴⁷:

"8.6.2 As passenger demand returns to pre-Covid levels and increases to above higher than the Current Condition 8 limit of 18 mppa, it is predicted that the existing Condition 10 contours would be breached." (our underlining)

96. These statements indicate that the Applicant believes "*passenger demand*" justifies the need to vary the Conditions, implying that development of the Airport should be demand-driven.

97. Such an approach would appear to be at variance with the justification for planning conditions which limit the throughput of passengers and the sizes of noise contour areas respectively for Reasons clearly set out in 2014 under the headings "**Controls over operations**" and "**Noise**"⁴⁸: Original condition 10, the passenger throughput cap (renumbered 8 in 2015):

"Reason: To enable the Local Planning Authority to exercise proper control over the development, in the interests of securing a satisfactory operation of the development and to safeguard the

⁴⁵ CD8.32 'LR 32m Appendix 16.1 Noise', Luton Rising, Feb 2022

⁴⁶ CD1.16 'Volume 2: Environmental Statement Addendum', Wood, Jul 2022

⁴⁷ CD4.06 'ES – Chapter 8 Noise Revised', Wood, May 2021

⁴⁸ CD6.03 'Decision Notice for 18mppa', LPA, Jun 2014, PDF p5 and 8; and repeated in CD7.03 'Decision Notice for Variation', LPA, Oct 2017, PDF p4 and 5

amenities of the surrounding area. To accord with the objectives of Policy LP1 of the Luton Local Plan and the National Planning Policy Framework”

Original condition 12, the noise contour limits (renumbered 10 in 2015):

“Reason: To safeguard residential amenity. To accord with the objectives of Policy LP1 and LLA1 of the Luton Local Plan and the National Planning Policy Framework.”

98. The Applicant also appears unclear on the difference between an aspiration and a commitment, since its statutory 2019 Noise Action Plan⁴⁹, drafted, reviewed and submitted when the Applicant was in breach of its noise contour limits, states on page 10:

“By 2021, LLA will develop a strategy to define methods to reduce the area of the noise contours by 2028 for daytime noise to 15.2sq km for the area exposed to 57dB(A) Leq16hr (0700-2300) and above and for night-time noise to 31.6 sq km for the area exposed to 48dB(A) Leq8hr (2300-0700) and above.” (this strategy is still outstanding, as indicated in paragraphs 59 and 60)

and in section 3.4 on page 14:

“We will operate within our agreed contour area limits. 57dB(A) Leq16hr (0700- 2300) - 19.4 sq km. 48dB(A) Leq8hr (2300- 0700) - 37.2 sq km.” (when in 2019 both limits were exceeded)

99. We can find no evidence of how the planning commitment to operate within the noise contour limit was ever treated as a commitment in practical terms which led to regulation of the growth trajectory so that the noise contour conditions applied in 2014 would be complied with. Instead, a draft report written by BAP⁵⁰ and circulated to the Applicant and to the LPA, provides detailed advice on a Transition Arrangement to move to application for extension of the noise contours above and beyond the conditions issued in 2014, as referred to in paragraph 53.

100. The Foreword to the Applicant’s 2018 Annual Monitoring Report⁵¹ provides a further example of what I regard as “corporate doublespeak”, where aspiration and commitment appear to have been confused:

“We have a range of operating restrictions including movement limits and noise quota limits, and we are focussed on ensuring they are adhered to. We’re also in the process of requesting temporary changes to our noise contour to ensure we remain fully compliant with existing regulations.” (our underlining)

⁴⁹ CD13.11 ‘London Luton Airport Noise Action Plan 2019-2023’, LLA,

⁵⁰ CD13.48 ‘A9501-R06D-DC Draft Transitional Arrangement’, BAP, Jul 2017

⁵¹ CD8.25 ‘LLA AMR 2018’, LLA

11) Transparency and influence

101. In this section I provide information which shows that:

- No record was kept of pre-application meetings between the Applicant and the LPA
- LLAL has had a direct and relevant influence on matters of concern to the Inquiry

102. Having read the LPA's Enforcement Policy⁵², and being aware of the significant time which has elapsed, I asked the LPA to provide minutes or emails of meetings relating to any discussion of enforcement against the breaches or the Application. The LPA declined to provide details, but did indicate the dates and times of a number of pre-application meetings attended by its Planning Officer (see Annex B) relating to this application and to its predecessor 19/00428/EIA. However, the response confirmed that there were no minutes of such meetings (see Annex B).

103. The LGA Guidance on probity in local planning⁵³ emphasises the importance of keeping notes of pre-application meetings and discussions to avoid any perception of bias or predetermination. In the section *"Meetings and discussions before a decision"* (p15 and 16) it states:

"The Localism Act, particularly Section 25, which establishes prior indications of view of a matter not to amount to predetermination, has given councillors much more freedom to engage in pre-application discussions. Nevertheless, in order to avoid the perception that councillors might have fettered their discretion, such discussions should take place within clear, published guidelines."

"Officers should arrange any meetings, attend these with councillors and make a written record of the meeting placing this note on the case file. A note should also be taken of any phone conversations, and relevant emails recorded for the file. Notes should record issues raised and advice given. If there is a legitimate reason for confidentiality regarding a proposal, a note of the nonconfidential issues raised or advice given can still normally be placed on the file to reassure others not party to the discussion." (our underlining)

104. In order to help the Inquiry to understand the justification for the LPA's decision to accept an application to vary conditions, rather than to enforce condition 10 in line with its Enforcement Policy⁵⁴, I requested sight of the relevant minutes, emails or file from the LPA, but nothing has been provided to date.

⁵² See CD8.19 'Luton Borough Council Enforcement Policy', Dec 2015

⁵³ 'Probity in planning - Advice for councillors and officers making planning decisions', LGA, Dec 2019

⁵⁴ CD8.19 'LBC Enforcement Policy', undated, Luton Borough Council

105. Our difficulty in obtaining information from the LPA to assist the Inquiry appears to be at odds with the LGA Guidance cited in paragraph 103 above, which on page 6 states:
“Because planning decisions can be controversial, it is particularly important that the process is open and transparent.” and on page 7 confirms *“The seven principles of public life apply to anyone who works as a public office-holder. ... The overarching principles were first set out by Lord Nolan in 1995 in the Government’s First Report on Standards in Public Life. They were reasserted and refined in subsequent reports of the Committee on Standards in Public Life, most recently the Local Government Ethical Standards Report published in 2019.”*⁵⁵
106. The LGA Guidance reiterates the Nolan principles, including: *“Openness: holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.”*
107. The 2019 CSPL paper referred to in the footnote to paragraph 105 contains a chapter 7 which emphasises a number of best practice measures regarding “Councils’ Corporate Arrangements” which would provide a beneficial yardstick if the Inquiry considers that the closely interlocked relationship between the LPA and LLAL, and the influence of the LPA and LLAL on the rate of growth of throughput which breached the LPA’s planning controls, is a matter of concern. We do have a number of concerns in this area, one being that during the material growth period the LPA and LLAL apparently shared one controlling mind⁵⁶.
108. We also have concerns over a 2018 Local Government Chronicle (LGC) article⁵⁷ attributed to the CEO of the LPA which confirms that a project for growth of the Airport *“significantly beyond its current permitted capacity”* had a timescale of *“2017-2021”* with *“six core staff”* working on the project, and the same Officer contact details as referenced in the preceding paragraph. The article sheds light on the nature of the interlock in statements such as: *“In that time **we** have delivered 50% growth, with 48 months of consecutive growth”* and *“**We** have also submitted planning applications through our airport company for two development projects – New Century Park and Bartlett Square”* (our emphasis): the “we” in both cases referring to projects for growth and the facilitation of growth of the Airport which hitherto the LPA has determined.
109. The financial prudence of such projects appears questionable: the LGC article goes on to say *“We have also invested £225m to deliver the state-of-the-art Luton DART fast transit system,*

⁵⁵ The Government Ethical Standards Report referred to by the Local Government Association Guidelines in a footnote is the ‘Command Paper on Local Government Standards’, published by the Committee for Standards in Public Life in December 2019

⁵⁶ CD8.22 ‘LBC-LLAL Officer Linked-In Page’ retrieved from Linked In Feb 2020

⁵⁷ CD8.20 ‘LBC Officer LGC Article’, Trevor Holden, Apr 2018

linking London Luton Airport with Luton Airport Parkway railway station.” But in the 2021 LLAL financial statements, an impairment write-down of £185m has been applied to the DART by its ex-Auditors PriceWaterhouse Coopers, reducing its value as a capital asset from £262m to £77m.

110. The external auditors of the LPA, Ernst and Young, stated in their “Luton Borough Council Audit Results Report year ended 31 March 2018”, published 8th January 2019, in a section headed “Value for Money risks”, on page 43:

“What are our findings?

In considering our findings and recommendations, we have traced back all of the Council’s decision making papers since 2012. We were concerned that there is no documented evidence that would have enabled the Councillors and members of the public to have understood and been able to scrutinise the overall decision made by the Council on Airport ownership, future borrowing and investment.

For example, the paper considered by Council’s Executive in 2012 around the decision making to extend the concessionaire agreement did not refer to the evaluation of options undertaken in 2010 when there was the opportunity to break the agreement. In addition, we believe that none of the decision making papers, borrowing and treasury management documents since refer to the commitments the Council has in its concessionaire agreement and the significant termination payment should it chose to do something different. This is a significant and material reason that impacts on the timing of any evaluation of options.”

111. The apparently prevailing attitude towards achieving balanced growth and mitigation versus achieving commercial benefit is summed up in the email from an LPA Councillor who was and still is an LLAL Director, to a LADACAN member concerned about aircraft noise⁵⁸ which said: *“In terms of the pace of growth, LLAL introduced a growth incentive scheme at London Luton Airport for commercial reasons because of the threat of competition from other airports in the London area”*. The GIS agreement was signed within a month of planning agreement for the 2012 Application.

12) The effects of noise

112. The harmful effects on health, well-being and quality of life of aircraft noise, particularly at night, are documented in extensive literature some of which is cited in the Application and in

⁵⁸ CD8.13 ‘Eml LBC Cllr to LADACAN member’, Cllr Andy Malcolm, May 2019

written representations. The first-hand effects are evidenced in the consolidated responses from members of the public opposed to this Application⁵⁹.

113. The predecessor to the Application, 19/00428/EIA (to vary Condition 10 to increase the noise contours) was withdrawn in January 2021 after three rounds of public consultation, during which it was overwhelmingly opposed with 534 public comments opposing and 2 supporting. Like the current application, that involved multiple revisions and updates over nearly 2 years. The Application has also been overwhelmingly opposed, with 923 public comments opposing and 205 supporting. Areas of concern shared by those opposed is expressed as a Word Cloud in Annex F.
114. Over the past 7 years I have had numerous meetings with local people in towns and villages affected by the noise flights to and from the Airport, and the ground noise, including places such as Breachwood Green, Caddington, Childwickbury, Flamstead, Gorhambury, Harpenden, Hitchin, Jersey Farm, Kings Walden, Markyate, Pepperstock, Preston, Redbourn, Sandridge, Slip End, South Luton, St Albans, St Paul's Walden, Wheathampstead and Wigmore. I have heard first-hand descriptions of the effects of this noise on their health and quality of life. Many people email me, some in despair, suffering depression or stress, some fearing for their mental health because of the relentless and significantly increased noise from flights which, during the busiest ever contour-breaching year of 2019 would, start before 06:00 and continue into the small hours.
115. Chart 5 (from the Applicant's 2019 Annual Monitoring Report referenced in paragraph 91) shows that during the busiest day, 24th May, every hour of the day and night had aircraft noise. There is never "Silent Night" near Luton Airport: a 24-hour operating licence permits its low-cost airlines to schedule the first wave of departures starting before 06:00, another at lunchtime and another at teatime, with the last wave of arrivals lingering on until the small hours, and cargo flights or departure slots scheduled at 02:00 adding to the noise disturbance. For some communities there is no respite at all. People living close to, or in line with, the runway will hear and may be overflowed at low level either by arrivals or departures regardless of which way the wind is blowing, every day of the year: South Luton, Wigmore, Beachwood Green, Bendish, St Paul's Walden, West Stevenage being particularly affected.

⁵⁹ Core Document section 3: the contents were not available at time of writing so a CD number is not given.

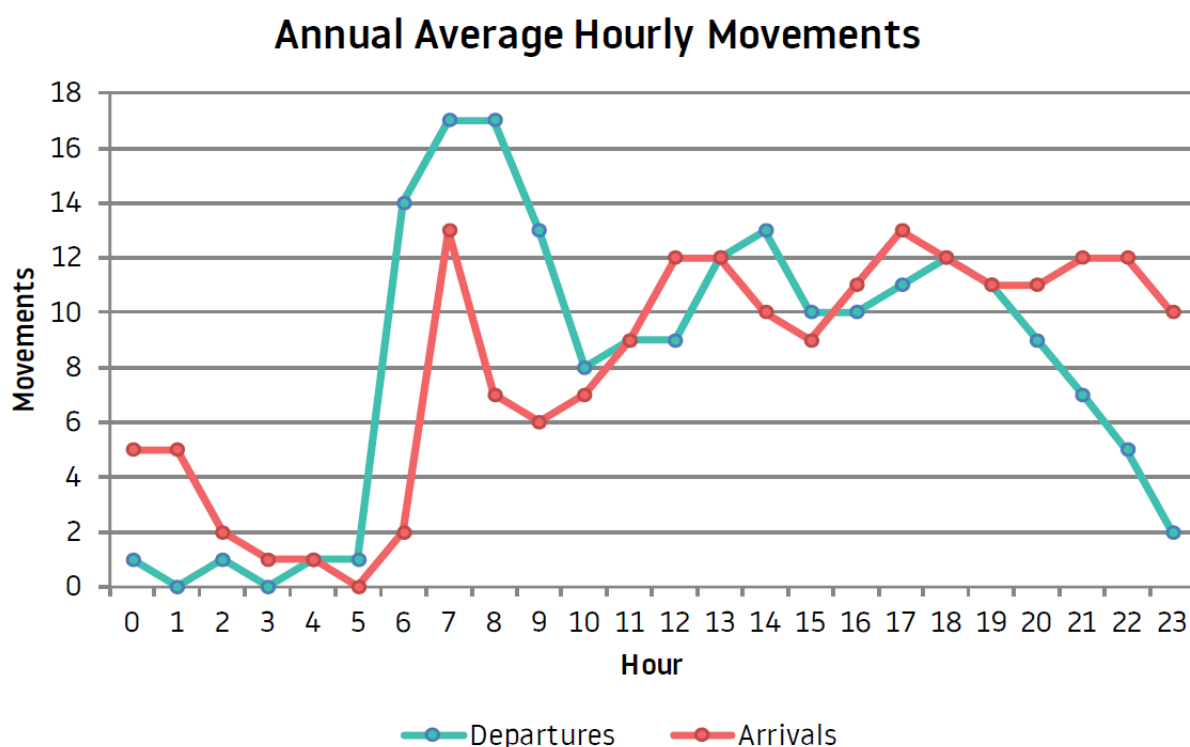


Chart 5: Average number of flights per hour during the busiest day in 2019 (source: LLA)

116. People living closest, within a defined contour band, are offered noise insulation as described in the Noise Insulation Scheme⁶⁰. This involves keeping the windows closed and having a metal box on an inside wall to provide ventilation: not all those offered the scheme take it up⁶¹ and by end of 2018 an acceptance rate of around 40% was reported and that Applicant undertook to arrange a survey to obtain feedback from those with units installed⁶². To my knowledge after enquiring of a member of the relevant committee, the survey has not yet been undertaken.

117. A review by the Independent Commission on Civil Aviation Noise (ICCAN) of noise insulation schemes identified a number of areas where best practice could beneficially be established⁶³. One obvious problem with such insulation is that people cannot open windows when it is hot, or enjoy their balconies, without losing the benefit of noise reduction. The LPA's Planning Officer has indicated that the noise insulation proposed by the Application is regarded as a form of compensation because not all eligible properties will be insulated when adverse noise impacts are experienced⁶⁴. As far as I can ascertain, no non-residential noise insulation has yet been installed since the affected properties are expected to approach the Applicant for insulation.

⁶⁰ CD8.28 'LLA Noise Insulation Scheme', LLA,

⁶¹ CD8.46 'LLACC NIS sub-committee meeting (redacted)', LLACC, Nov 2017

⁶² CD13.31 'LLACC NIS committee meeting Version 1', LLACC, Nov 2018

⁶³ CD8.17 'ICCAN Noise Insulation Review', ICCAN, Mar 2021

⁶⁴ CD5.08 'DMC Item 7 London Luton Airport', LPA, Nov 2021 See paragraphs 129 and 141 (iv)

118. The effects of noise over the period from 2014 were increased due to evolution of the fleet whereby the proportion of smaller, comparatively less noisy aircraft such as the Airbus A319 reduced, and the proportion of larger, comparatively more noisy aircraft such as the Airbus A320 and Airbus A321 increased – while at the same time (as shown in paragraph 87, Chart 4) total numbers of flights were also increasing. The evolution of the fleet over the five years to 2019 is shown in Chart 6 below, reproduced from the Applicant’s 2019 Annual Monitoring Report⁶⁵:

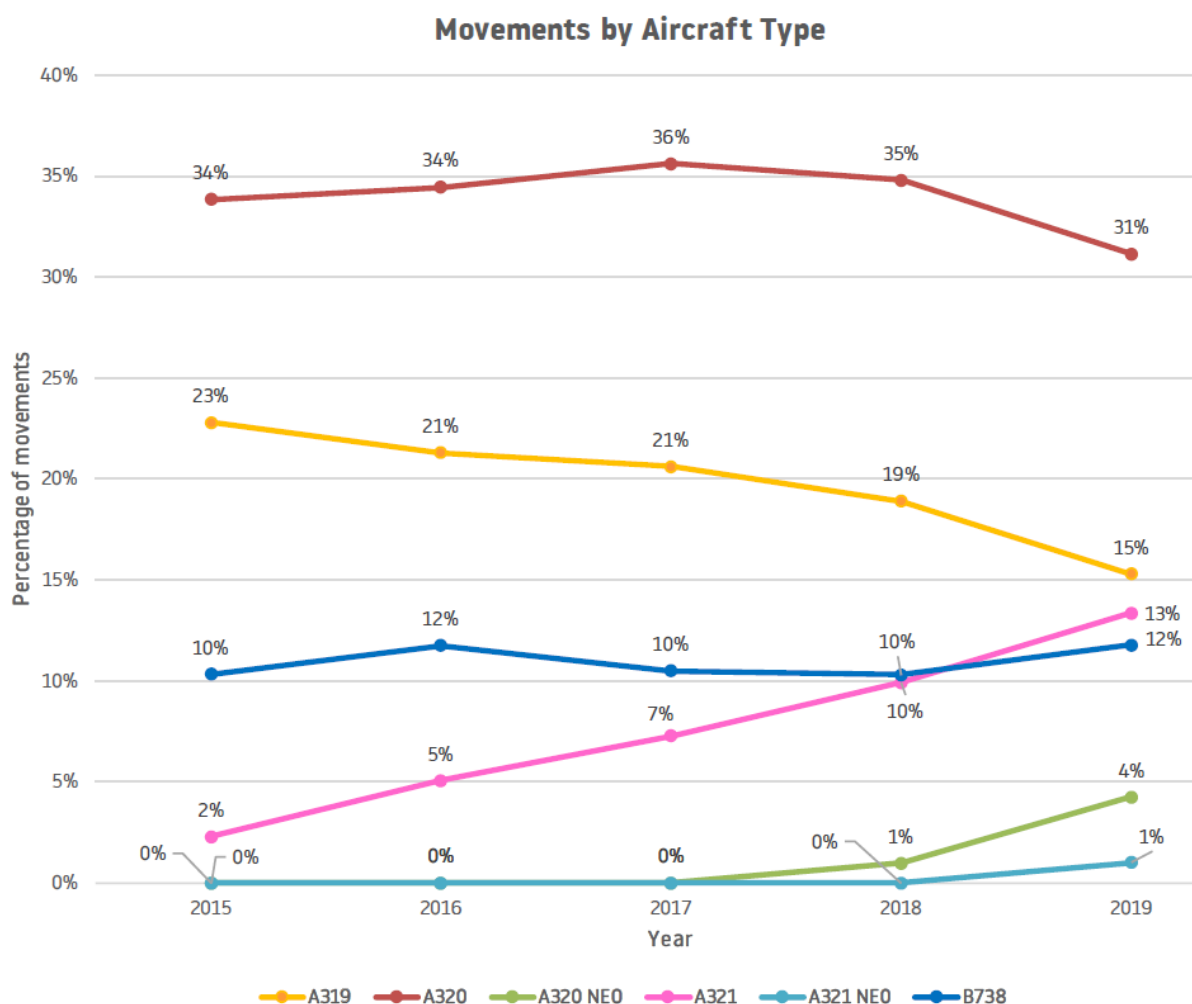


Chart 6: percentage of main aircraft type in the Luton Airport fleet mix, 2015-2019 (Source: LLA)

119. The slides shown by the LPA’s noise adviser at the second Planning Meeting to determine the Application confirm that the past impacts of this non-permitted development compared to the original noise contour condition limits have been greater than at present and are projected (on the basis of the Applicant’s forecasts) to diminish over time⁶⁶.

⁶⁵ CD8.26 ‘LLA AMR 2019’, LLA, page 11

⁶⁶ CD5.09 ‘DMC Amendment Sheet’, LPA, Nov 2021, see PDF pages 24 and 25

120. The Application is retrospective, and was not made reasonably promptly after the Applicant knew in 2016 of the likelihood of breach and had received in 2017 the Transition Arrangement report referred to in paragraph 53. There was a further 2½ year delay in producing an application which could be determined (including the withdrawn predecessor application 19/00428/EIA). As a result of this and other delays, the Applicant has benefited by being able to present a delayed ES which does not quantify the greater past harms relative to the “without development” case. Put more simply: provided the forecasts of future diminution in the noise impacts can be relied upon, the relative scale of harm in future years appears to be reduced compared to the relative scale of past harms, enabling the Applicant to claim that the noise effects are “not significant”.⁶⁷ This does seem to accord with the broad policy principle of fairly sharing the benefits of aviation expansion: in this tactical scenario the community has suffered and the industry has benefited.

121. Common-sense logic indicates that an alternative view could be taken along these lines:

- Exposure to aviation noise is known to cause harm (for example increased risk of stroke)
- Since the increased risks arise from physiological damage, they may not diminish over time
- Hence past exposure to more than permitted noise could cause a present increased risk

I therefore suggest that in this particular case it would be reasonable to consider the past harms caused by the non-permitted development and the delay in resolution or enforcement, as well as the predicted future harms, when weighing in the balance the impacts of the Application with regard to the effects of noise.

13) The Noise Control Scheme

122. In this section I provide information which shows that:

- Condition 9 requires the Applicant to adhere to the Noise Control Scheme
- The Applicant published its Noise Control Scheme in 2015, including noise contour limits
- The Application does not seek to vary Condition 9, therefore those limits still stand

123. The 2015 Decision Sheet⁶⁸ following the 2015 variation restates Condition 9 with the preface:

“The development shall be operated in accordance with the Noise Control Scheme approved on 2 March 2015 (ref: 14/01519/DOC). For the avoidance of doubt the controls within that scheme

⁶⁷ CD1.18 ‘Addendum to CD1.08 Environmental Statement Non Technical Summary’, Wood, Jul 2022, page 15

⁶⁸ CD7.09 ‘2015 Decision Notice for Variation’, LBC, Oct 2017

include:"

and then goes on to list various noise controls.

124. In 2015 the Applicant published its Noise Control Scheme⁶⁹, which in the preface states:

"In order to honour our commitments to minimise noise we have developed a full suite of control measures, which together form our Noise Control Scheme. This includes measures that respond to the planning conditions associated with our planning permission, a number of voluntary measures agreed in consultation with LLACC and some that follow best industry practice. The Noise Control Scheme has been approved by Luton Borough Council and is subject to periodic review."

125. The Applicant's Noise Control Scheme then goes on to include the noise contour controls and specifies their existing limits, stating:

"To manage residential amenity, the area within which the average noise level can exceed 57dBA is limited to 19.4 sq. km. during the daytime period. The area for which noise can exceed 48dB i.e. within the 48dB contour at night is restricted to 37.2 sq. km. Average noise levels are not permitted to exceed these levels outside of these areas. Our ongoing aim is to encourage the use of quieter aircraft. To achieve this we intend to reduce the 57dB average daytime noise contour area to 15.2 sq. km. and the night-time noise to 31.6 sq. km. for the area exposed to 48dB and above by 2028."

126. The Application does not seek to vary Condition 9, and has not evidenced a variation to the Noise Control Scheme being agreed by proper periodic review, therefore it is reasonable to assume that the existing noise contour limits still stand, regardless of the Application.

14) Noise monitoring equipment

127. In this section I provide information which shows that:

- The Applicant is required to maintain and validate noise and track monitoring equipment
- The Applicant disclosed its noise measurements to us, which contain significant errors
- Key recalibration of the noise contour model did not apparently follow best practice

128. Section 4.2 "Elements of Luton's Future Overall Noise Management Pursuant to Condition 13 (now numbered 11)" of the Noise Report referenced in paragraph 40 above identifies key responsibilities of the Applicant, underlined below:

⁶⁹ CD8.45 'Noise Control Scheme London Luton Airport', LLA, Aug 2015

“Fixed Noise Monitoring

The Airport will continue to maintain, calibrate, and operate the current Aircraft Noise and Track Monitoring System or one updated. LLAOL will continue to carry out noise monitoring at the following locations: (i) Pepsal End Farm, Pepsal End, Bedfordshire; (ii) Grove Farm, Slip End, Bedfordshire; (iii) Frogmore Bottom, Hertfordshire. Or if these locations become unavailable or not appropriate alternative locations agreed with the local planning authority (Luton Borough Council).

Noise levels of departing aircraft passing in the vicinity of the noise monitors will be recorded and the results analysed, to establish the departure noise level in relation to the aircraft registration. Using the registration the noise certification values for the aircraft will be obtained via the operator. This information will allow the QC value of the aircraft to be determined. ACL will use this information to implement any restrictions on aircraft slots given at the airport.”

The 2015 Planning Decision Notice⁷⁰ adds further requirements in its restated Condition 11:

“For the avoidance of doubt the controls include:

- i) Fixed noise monitoring terminals and track keeping system (vertical and horizontal)*
- iv) Arrangements for the verification of the submitted information”*

Maintenance, calibration, verification, recording noise levels at appropriate locations, analysis, and recording registration values⁷¹ are all included in the above obligations.

129. After summarising my understanding of the noise and track-keeping (NTK) system at the Airport, I will evidence my concerns over the discharge of each of the above obligations. It is clear from the BAP reports that calibration and regular validation noise contour model depends on the data provided by the Applicant from the equipment which the Applicant is responsible for. If the noise contour model is not adjusted consistently over time using verified and comparable data then the accuracy of modelling of the noise contours will be affected, and likewise the noise impact assessment within the ES.

130. Informed by attendance at the NTSC and discussions with the Applicant’s noise team when for example I have hosted their portable noise monitoring systems, my understanding of the systems and information flows involved in the Airport’s Noise and Track Keeping (NTK) system and the noise modelling and noise contour production can be briefly summarised as follows:

⁷⁰ CD7.03 ‘2015 Decision Notice for Variation’, LPA, Oct 2017

⁷¹ An aircraft’s registration code is unique to that airframe, from which the aircraft type and type of engines can be found, as well as the noise certification values used for the Quota Count controls pursuant to Condition 11.

NTK system:

- The NTK system integrates radar data, flight schedule data and raw noise data
- Radar data provides timed position and altitude points of identified aircraft in flight
- The flight schedule data includes airline, flight, date/time, origin/destination, aircraft
- Fixed and mobile noise monitoring terminals (NMTs) are deployed by the Applicant
- The noise monitors transmit once-a-second noise level readings to the NTK system
- The noise monitors can also transmit self-calibration check readings to the NTK system
- The NTK system performs correlation between monitor noise data with flight radar data
- Correlations identified by the NTK are stored and can be exported as spreadsheets

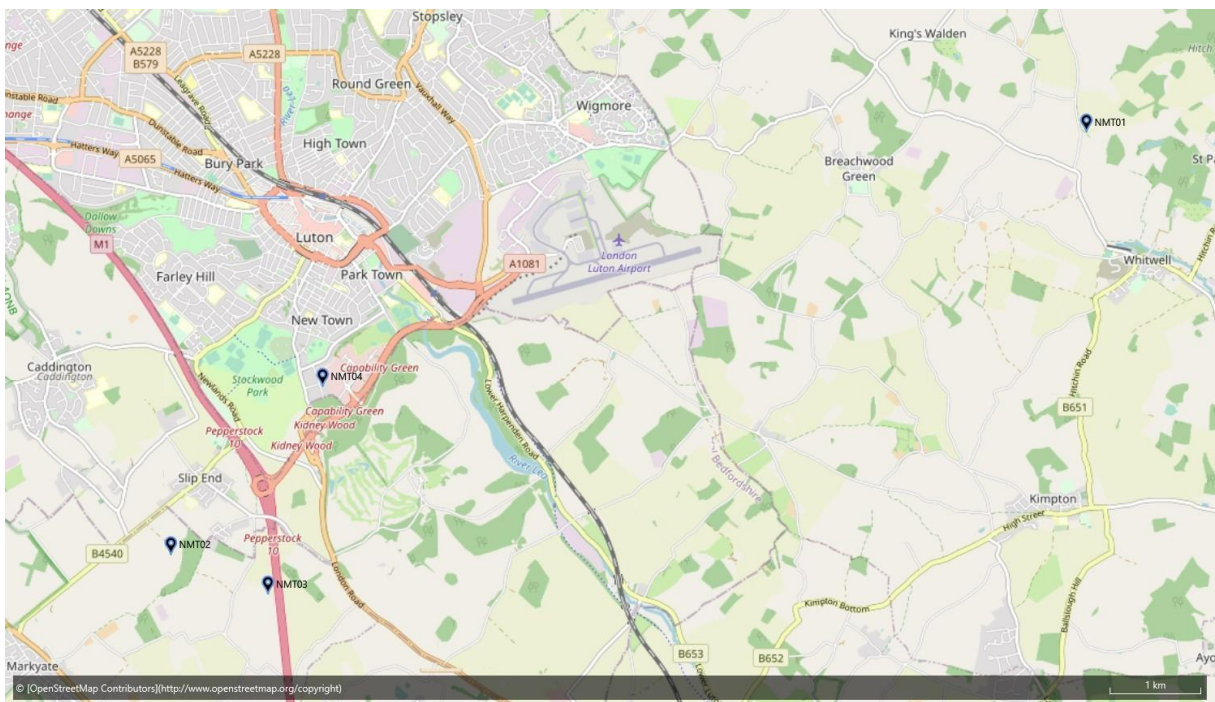
Noise model and noise contour production:

- Correlated noise measurements data and aircraft movements data is sent to BAP
- The noise and movements data sent to or used by BAP may be actual or forecast values
- BAP maintains the noise contour model which produces actual and forecast contour data
- The location and area of the noise contours indicate households exposed to given noise

Noise monitor identifiers and locations:

The Applicant has disclosed the following graphic indicating the fixed noise monitor locations

NMT01, NMT02, NMT03 and the mobile monitor NMT04 used for the monitoring in South Luton:



131. It is clear that all of these systems and processes are relied on in the production of the contour information presented in the Application, aspects of which are described in associated BAP reports included in the Core Library⁷².

132. I now set out information relating to the obligations identified in paragraph 128, indicating my concerns over areas where the obligations are apparently not being met.

Maintenance

133. Based on observations of Travis and information discussed with the Applicant at NTSC meetings, there have been periods of more than 2-3 days when not all fixed monitors were functioning – for example fixed monitor NMT03 was out of service for much of April to August 2016; fixed monitor NMT02 was out of service for much of October and November 2016; fixed monitor NMT03 was out of service during November 2019. BAP reports state *“NMT2 and NMT3 given half-weighting”* and *“the results from NMT 3, due to its proximity to the motorway, are likely to overstate the aircraft noise.”* Depending on the size of the disparity, removing one and not the other of this pair of monitors would be likely to affect noise measurement analysis covering those periods, but this is not considered in the noise contour model adjustment reports.

Calibration

134. The professional fixed noise monitors used for NMT01, NMT02 and NM03 are known to be able to send daily calibration reports to the Applicant’s NTK system. I requested calibration reports for these monitors from the Applicant for the period 2018-2019, which were provided. As the charts in Annex E show, which reproduce pages from those reports, NMT03 was out of calibration limits for significant periods during those years. This would affect the validity of noise measurements which were used by BAP to adjust the noise contour model in those years. Their reports⁷³ do not mention this issue, so it is probable they were not advised of it and could inadvertently have used out-of-calibration noise measurements in the adjustment of the noise contour model.

Verification

135. The raw data for the 2014/15 South Luton monitoring has been disclosed by the Applicant⁷⁴ along with the details of the pre-processing filtering of invalid entries performed by BAP before using it for calibration of the noise contour model. The A320ceo arrival and departure noise data

⁷² See for example CD13.14 ‘Validation of INM prediction’, BAP, 2012; CD13.15 ‘2017 Summer Contours’, BAP, Nov 2017; CD13.17 ‘Contouring methodology update’, BAP, Aug 2018; CD13.23 ‘Processing of NMT results’, BAP, Jul 2022

⁷³ CD13.17 ‘2018 contouring methodology update’, BAP, Nov 2018 and CD13.16 ‘2019 contouring methodology update’, BAP, Nov 2019

⁷⁴ CD8.49 ‘Raw noise data’, as provided by the Applicant to BAP for noise contour model validation, 2014-2019

from 2014-2017 was also disclosed, as were the noise measurements from 2018 and 2019. In all cases, I requested the raw noise data which had been sent to BAP, so as to minimise effort on the part of the Applicant because this would already be available in an exported form from the NTK.

136. I reviewed the noise measurement data which the Applicant has disclosed using the data filtering methodology which BAP disclosed, and performed some basic verification checks. As BAP acknowledges, the measurements contain numerous duplicate entries (same date, time, airline, flight, runway, origin/destination). Some have different noise information and different times at which the noise measurement was correlated with the track of the corresponding flight, and different noise peak durations. Some of the peak times of duplicate measurements varied by a few seconds, others by 8-10 minutes or more. I surmised that the former are due to erroneous identification of the noise peak, the latter due to go-arounds (arrivals which for technical reasons do not land first time so climb away and “go around” the airfield to re-join the arrivals queue and complete a landing).

If a flight “goes around” once, it generates around four times as much local low-level noise as it would have done had it landed first time: (1) initial arrival; (2) climb away again as a departure; (3) transit an unusual route at low altitude back to the arrival queue; and (4) final landing. The statistics on go-arounds are not published, but this fourfold noise impact may justify inclusion of go-around operations in the noise contour model, as part of the BAP calibration.

Recording noise levels at appropriate locations

137. The BAP noise contouring report for 2018 referred to in paragraph 134 describes adjustment of the modelled noise values for different aircraft types based on the noise measurements (in the disclosed raw data) from the fixed monitors. It caveats the exercise by noting *“In this it is taken into account that the results from NMT 3, due to its proximity to the motorway, are likely to overstate the aircraft noise.”*

It is unclear how this is taken into account, or what the quantity of any adjustment might be. I assessed the difference in values between NMT02 (rural farming location) and NMT03 (adjacent to the M1) for the roughly 27,000 Airbus and Boeing flight departures which registered at both those monitors during 2018 (after having corrected the types where they were in error according to the registration code – see below), and found overall arithmetic average difference to be less than 1dB SEL overall, but that it varied between aircraft types. For the most numerous (A320ceo) type, the difference was 0.6dB SEL from 12,000 readings. But in any case, it remains unclear why the Applicant still relies on NMT03 when in 2017 the NTSC minuted a recommendation to re-site a monitor more centrally beneath the most frequently used departure route:

“7) LLAOL progresses the installation of a noise monitor between NMT02 and NMT03 and provides a report correlating the noise data from each monitor with the lateral position of corresponding flights (once the radar-derived position data is known to be accurate) for NTSC to assess.”⁷⁵

This recommendation was not actioned, and NMT03 remains in a noise-polluted location as BAP has highlighted and as can be seen from the graphic in paragraph 130.

Analysis

138. The noise contour model relies on the calibration data used to adjust the performance of aircraft as accurately as possible to confirmatory measured values⁷⁶. Here, in analysing the data, I noted a number of areas where more sophisticated analysis would benefit the modelling. One significant example is given here:

2015 contour model recalibration exercise

For three winter weeks between 23 Dec 2014 and 14 Jan 2015 a mobile noise monitor in Ludlow Avenue, South Luton, was used to recalibrate the departure profiles of the main aircraft types⁷⁷. After applying the BAP filters and removing duplicates, the South Luton data appears to contain the following numbers of noise measurements by aircraft type and runway for the main airlines:

2015 monitoring data	easyJet	Wizz Air	RyanAir
Airbus A319	08 Arrival: 65 26 Depart: 521		
Airbus A320	08 Arrival: 20 26 Depart: 161	08 Arrival: 43 26 Depart: 464	
Boeing 737-800			08 Arrival: 10 26 Depart: 126

Compared to the “*many thousands*” of samples normally used to underpin contour modelling⁷⁸, the 2015 sample sizes would seem unrepresentatively low and hence prone to sampling error. Yet based on these results and “discussions with airlines” about their departure profiles, BAP recalibrated the noise contour model, resulting in a marked reduction in contour areas. I asked

⁷⁵ LLA NTSC minutes, June 2017, available from LLACC website by searching online “Luton Airport LLACC”

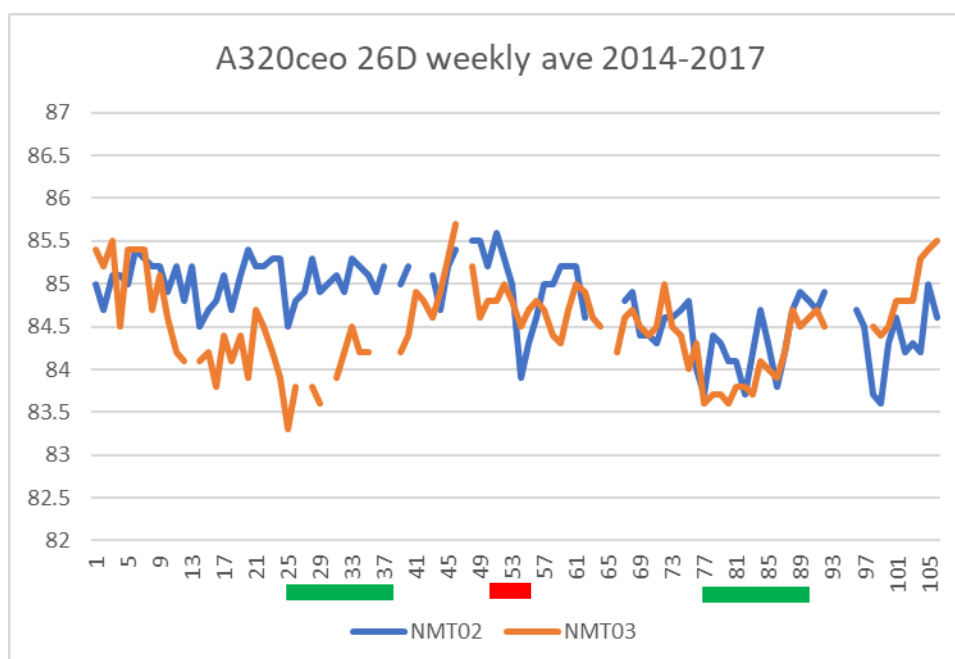
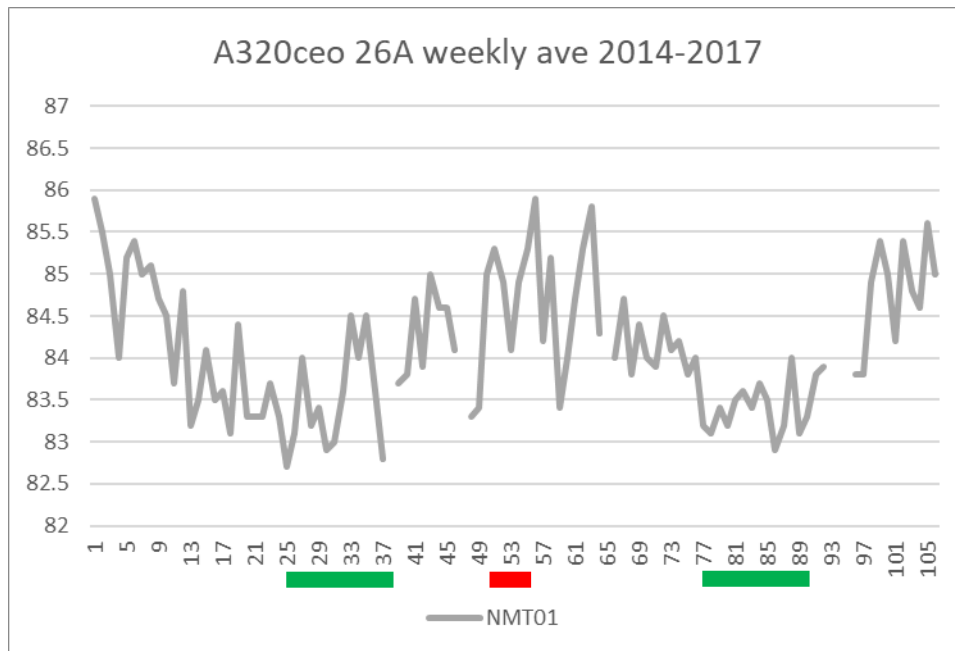
⁷⁶ Apart from the narrative in the BAP reports, CD8.21 ‘LBC Response to Andrew Lambourne’, LPA and BAP, May 2020, shows how much difference the adjustment of a noise reduction parameter can have to the area of the noise contours, which may not be easily perceived by the naked eye.

⁷⁷ CD8.06 ‘BAP contouring methodology update’, BAP, Aug 2015

⁷⁸ CD13.21 ‘Noise contour assessment’, BAP, Jul 2019, p4

for further information about the departure profiles, but was advised by the Applicant that these are confidential. I asked for details of any other South Luton monitoring used to calibrate the model but none were provided, and subsequent BAP contouring reports in 2018 and 2019 refer only to this South Luton monitoring.

139. The charts below show the weekly arithmetic average SEL noise measurements (using the disclosed data) for A320ceo arrivals and departures using Runway 26 at the Airport between January 2014 and December 2015, where sample sizes of 50 or more are available:



The 92-day summer periods are represented by the green bars; the period of South Luton monitoring is represented by the red bar.

I know that the statutory 92-day summer noise contours are not calculated directly from noise measurements, but the calibration of the model was adjusted using the South Luton monitoring. These charts indicate that the South Luton monitoring was inadequate to be representative of the variation in noisiness of flights which occurs over time due to weather and loading factors.

Recording the registration values

140. I reviewed the noise measurement data which the Applicant has disclosed⁷⁹ using same the data filtering methodology which BAP has disclosed, and performed some basic verification checks. Given the key tie-in between the airframe registration code and the aircraft type / engine type mentioned in paragraph 128 above, this would appear an obvious verification test since the data contains both values for each flight.

I created a checklist of registration codes of the modernised aircraft types (A320neo, A321neo) in the fleets of the main airlines using the Airport during 2018 and 2019 which are the years in which BAP indicates it calibrated the noise data for the A320 and A321 types. Comparing the disclosed data to the checklist showed a significant number of errors in which the registration code did not match the expected aircraft type in 2018.

Breaking these down by month showed a spike in the September (over 1300 errors) and October (over 1200 errors). In responses to a query, the Applicant's agent advised that BAP had not made changes to data parameters, suggesting again that they had not been notified of the issue. If this is the case, the contour model calibration in 2018 would have been affected, and possibly also the numbers of movements in the 92-day contouring calculation since the errors affected mostly aircraft being designated erroneously as modernised neo types when they were in fact ceo types. It would be appropriate for this contour calibration exercise to be revisited with corrected data – but see also the comments above regarding calibration.

15) Conclusions

141. The Airport is owned by the LPA through LLAL in response to the Airports Act 1986, which provides two options for managing an airport owned by a local planning authority. The second option is for the airport to be managed by a third-party company whose directors are qualified for the role. In the case of Luton, the Applicant is the airport operator.

142. In 2012 the operating concession agreement was extended by three years to 2031 in return for the Applicant investing to develop the site based on a plan from LLAL, and applying for a

⁷⁹ CD8.49 'Raw noise data', as provided by the Applicant to BAP for noise contour model validation, 2014-2019

more significant capacity expansion by 2028 than it had itself proposed. That application (12/01400/FUL) was consulted on and agreed by the LPA, subject to obligations and conditions, at the end of 2013. The documentation indicates that LLAL negotiated hard to achieve future development in line with its own plans and strategy for the Airport.

143. The 2014 planning obligations and conditions were clearly designed to ensure mitigation and control of noise in balance with the significant expansion of throughput and flights during a 15-year growth period. A gradual modernisation of the aircraft fleet by the introduction less noisy aircraft types was projected to provide balancing noise mitigation. This balance was tuned to ensure that the “noise contour footprint” of the Airport would remain, as the Local Plan required, below the actual level established for 1999 and carried forwards by agreement into the new conditions.
144. I observe that the significance of the environmental impacts appeared to be matched by a set of planning controls designed to ensure conformance with the Local Plan and national policy, and to protect residential amenity. This depended on expansion over a timeframe sufficient to allow for noise mitigation by fleet modernisation to take place.
145. I observe that noise contours are a valuable mechanism to secure noise mitigation, since they take account of the number of flights and the actual individual noisiness of the types of aircraft as operated at the airport in question.
146. I observe that a passenger cap is also a mechanism for noise control, since it limits the number of seats occupied by commercial passengers, and hence (according to the fleet mix) the number of flights over the defined period.
147. The S106 Agreement governing the 2014 permission requires reporting of the noise impacts and trends in environmental impact indicators, and I observed that such reporting was regularly provided by the Applicant to the LPA during the period since 2014. I conclude that the Director of Planning of the LPA has an obligation to monitor the Applicant’s performance against the S106 Agreement. That Agreement also includes a commitment that the Applicant will identify and seek to avoid adverse noise trends.
148. To my knowledge the Applicant can limit the rate of release of flight slots via its twice-yearly capacity declarations, and its noise adviser is able to forward-model (based on forecast or confirmed schedules) consequential noise contours, and to calibrate and adjust the modelling based on its interpretation of noise measurements exported from the Applicant’s NTK system.
149. Ultimately, if an adverse noise trend cannot be resolved by any other means, the ICAO 4-point plan indicates that operating restrictions (ie flying less aircraft) are appropriate. I conclude

from all the above that the 2014 permission incorporated sufficient obligations and conditions for balancing, reporting, monitoring, forecasting and controlling the rate of growth of throughput that the rate of growth of noise impacts should have remained within limits.

150. In 2016 an adverse trend was identified: BAP forecast a breach of night noise contours the following year. I suggest that the Applicant's proposed Action Plan could have been tested by modelling: on the face of it the measures appeared insufficient to resolve the problem, and since the breach did occur and continued to occur, I conclude that no effective corrective action was taken. Noting the LPA scrutiny backstop role as well as the controls, I simply cannot accept that a professional airport operator can plausibly claim that breaches of this magnitude and extent, worsening over time, were "unexpected". I concur that they were due to mismanagement.

151. The LPA urged the Applicant to bring noise back under control, but a retrospective planning application was submitted in 2019 to increase the noise contour limits and only to bring them back into line by the strategic long-term reduction date of 2028. After multiple consultations, that application was substituted by the current Application to extend long-term reduction by three years and also seek additional passenger capacity. Noting that the process to date since the first breach was confirmed has taken five years, three of which saw communities exposed to non-permitted levels of noise, I conclude that residential amenity has not been protected.

152. As a member of the NTSC, as a local resident and as a community representative I have long sought to understand how and why the apparently robust system of balances, reporting, scrutiny and controls attached to the 2014 permission apparently failed so soon after permission was granted. I have learned that a Growth Incentive Scheme was signed between the LPA, the Applicant and LLAL in January 2014, one month after the LPA agreed the 2012 Application. I also learned that the LPA, the Applicant and LLAL agreed to annual Baseline Review meetings where passenger thresholds and incentive amounts for the GIS incentivisation would be set. I noted the year-long absence from the LLACC and NTSC of the LPA during the rapid growth period.

153. I also learned that the LPA's Executive Committee and its Overview and Scrutiny Board regularly reviewed airport passenger performance against targets which were significantly higher than those projected in the 2012 Application. Knowing from the Applicant's reports that the rate of mitigation was not significantly ahead of schedule, I can only conclude there were two quite different throughput growth trajectories – one declared during consultation and determination of the 2012 Application, the other separately agreed between the LPA, the Applicant and LLAL.

154. This could explain why no effective control was applied to prevent worsening breaches of condition, and why no information about discussions concerning enforcement were disclosed.

Neither were notes kept of pre-application meetings, which appears not to conform with best-practice LGA Guidance.

155. The timeframe portrayed by the Application for achieving 18mppa is as misleading as the stance of the Applicant regarding its commitments to abide by conditions. There appears to be obfuscation designed to give the impression that the over-rapid growth was “unexpected”, when the evidence indicates it was discussed, known and driven against a targeted plan involving the main parties – but not, to my knowledge, disclosed to community representatives who attend the LLACC and NTSC. I am forced to conclude that if correct, this is an unacceptable state of affairs which would inspire no confidence in the integrity of the parties involved.
156. A more rapid growth agenda would explain the apparent “demand-led” approach rather than the expected controlled growth – and I have to conclude that the rate of targeted growth had no regard for planning restraints. The extent to which the Application and its predecessor have been modified suggests that a lack of transparency may not be accidental. The lack of clarity over the baseline “Do Nothing” case which we highlighted in our consultation responses persists.
157. Errors I have identified in the noise measurement data, equipment failures and lack of consistent calibration of the noise monitors, and a key noise model adjustment based on what appear to be unrepresentative samples, all cast doubts on the assessment of noise impacts. If the noise model is inaccurate then the impacts cannot reliably be evaluated.
158. The Noise Control Scheme appears to have been interpreted differently by the Applicant and the LPA, which may mean that Condition 9 still applies in any case and the existing noise contour limits still stand.
159. From all the above I conclude, based on the track record of the Applicant, the LPA and LLAL, that communities would be justified in having no confidence that the main parties were genuinely committed to ensuring balanced growth and mitigation following the 2014 permission. Instead, I conclude that the accelerated growth was commercially driven, noise and other environmental impacts were not controlled and, without a noise reduction strategy in place, may not reduce over the longer term to the extent suggested by the Application.
160. I conclude that this is an obvious and serious case of unresolved conflict of interest which can only be remedied by the involvement of independent third parties committed to ensuring that the interests of people whose health and quality of life have been and will be negatively affected by the environmental impacts of Luton Airport, are properly and adequately protected.

Annex A: Letter from Luton Rising officer



8 August 2022

Mr Andrew Lambourne
LADACAN



By email

Luton Rising
Hart House Business Centre
Kimpton Road
Luton
LU2 0LA

lutonrising.org.uk
01582 522 300

Dear Andrew

Thank you for your letter of 28 July 2022. I am responding to you in my role as Executive Director, Governance for Luton Rising as that is the organisation holding the information you have requested.

The following are the answers to your questions:

Question 1: You are, indeed, correct; apologies for any confusion.

Question 2: The annual target is in fact a forecast of passenger numbers prepared by the airport operator. At the time the report was written, the figures we were working with were:

2013-14	9.741m (actual)
2014-15	10.786m (actual)
2015-16	12.839m (actual)
2016-17	15.052m (actual)
2017-18	16.123m
2018-19	16.311m
2019-20	17.088m
2020-21	18m
2021-22	18m

Question 3: Quarterly targets are set by multiplying the forecast annual passenger number by the percentage of total passengers who used the airport in that particular quarter in the previous year. This reflects seasonal fluctuation and for the year in question the percentage for the April to June quarter was 26%

Question 4: The annual rebates on concession fee were as follows:

2013-14	.304m
2014-15	1.536m
2015-16	2.909m
2016-17	3.350m
2017-18	2.303m
2018-19	3.131m
2019-20	1.871m

Question 5: a separate response will be provided by Luton Council's Deputy Monitoring Officer.

Question 6: at the time the Growth Incentive Scheme was entered into, there was no expectation that the passenger cap or noise limits would be exceeded. The following are the forecast passenger numbers that were modelled at that time:

2013-14	9.738m
2014-15	10.601m
2015-16	11.602m
2016-17	13.180m
2017-18	14.007m
2018-19	14.176m
2019-20	14.368m

I hope that this answers your questions.

Yours sincerely,



Mark Turner,
Executive Director, Governance
Luton Rising

Annex B: Response to Freedom of Information Request regarding enforcement



Business Intelligence
Luton Council
Town Hall
Luton
LU1 2BQ

T: 01582 546398
E: FOI@luton.gov.uk
W: www.luton.gov.uk

Sent via email to:
info@ladacan.org

27 January 2022

Reference FOI/EIR REQ C71288 AL

Dear Mr Lambourne

Re: Your Environmental Information Regulations request

I write in response to your Environmental Information Regulations (EIR) request dated 15 July 2021 and apologise for the delay in providing you with a response.

Your Request

You requested that Mr Gurtler provide you with "a copy of the minutes of any meetings held between LBC and LLAOL in terms of the breach of noise contour planning control, possible enforcement and the proposed planning application."

We have considered your request under the Environmental Information Regulations 2004.

Response

I can confirm that we do not hold information within the scope of your request.

Regulation 12(4)(a) states that we must issue a formal refusal notice when this is the case.

In order to find any relevant minutes, My Gurtler has searched his calendar for dates of meetings between the Council and the airport operator in relation to this matter. This search has gone back to December 2016, the point at which, in compliance with the requirements of condition 10 of planning permission ref: 15/00950/VARCON (formerly condition 12 of planning permission 12/01400/FUL), LLAOL first alerted the Council that the 48dB LAeq(8hr) night noise contour might be exceeded over the summer period of 2017.

Luton



Having then established times and dates when these meetings took place, Mr Gurtler has then checked to see whether there were any hard copies or electronic minutes of the meetings and can confirm that there are none.

In terms of the meetings that took place, I am able to advise you that Mr Gurtler's calendar shows that there were nineteen meetings (many of which were MSTEams meetings due to the pandemic) with LLAOL in relation to the noise contours, the proposed variation to condition 10 (leading to the first planning application) and also meetings post submission and leading up to the second Section 73 application to vary the passenger cap as well as the noise cap.

The list of meetings is provided below, but for context I have also put in some key dates relating to events associated with the two Section 73 applications.

- i. Meeting 2017.2.16 @ 14.30 Luton Airport Noise Meeting to discuss forecast breach of summer noise contour and actions that might be taken
- ii. Meeting 2017.6.12 @ 14.00 Discuss Potential Noise (and AMR)
- iii. Meeting 2017.11.20 @ 12.00 Meeting to review compliance with conditions as approach 18mppa (also AMR compliance)
- iv. Meeting 2017.12.13 @ 14.00 Condition 12 controlling noise contours at Luton Airport (following confirmation of exceedence of night noise cap)
- v. Meeting 2018.4.3 @ 10.30 LLAOL - Noise meeting to discuss short term/ immediate actions by LLAOL, actions for summer 2019, longer term actions (noise reduction strategy) and scope of environmental statement to accompany Section 73 application
- vi. Meeting 2018.8.10 @ 8.30 Pre Section 73 Meeting
- vii. Meeting 2018.9.4 @ 09.00 Airport Planning
- viii. Pre-application request from LLAOL (ref: PREAPP/18/00196) re variation to condition 10 (including scoping report) submitted 2018.11.21
- ix. Meeting 2018.11.29 @ 12.00 LLAOL - S73 scope of environmental statement
- x. Meeting 2019.2.11 @ 15.30 Luton Airport – LLAOL Plans for 2019
- xi. Section 73 planning application to vary condition 10:noise (ref: 19/00428/EIA) submitted 2019.4.4
- xii. Regulation 25 Request to LLAOL 2019.5.29
- xiii. Meeting 2019.6.26 @ 11.00 Luton Airport 19 mppa meeting
- xiv. Regulation 25 Request to LLAOL 2019.11.25
- xv. Meeting 2020.1.22 @ 15.30 LLAOL 19mppa and Master Plan Update
- xvi. Meeting 2020.6.5 @ 10.30 Luton Airport 19 mppa Skype meeting
- xvii. Meeting 2020.8.28 @ 11.00 Skype meeting LBCWood - consultation discussion
- xviii. Meeting 2020.9.7 @ 13.00 Luton Airport 19 mppa EIA discussion
- xix. Section 73 planning application to vary conditions 8: passenger cap and 10: noise (ref: 21/00031/VARCON) submitted 2021.1.8
- xx. Meeting 2021.3.8 @ 15.00 LLAOL Outline Carbon Reduction Plan
- xxi. Meeting 2021.3.26 @ 9.30 Luton 19 mppa - Discussion on the outline CRP
- xxii. Meeting 2021.4.13 @ 10.00 LLA 19mppa VARCON noise assessment
- xxiii. Regulation 25 Request to LLAOL 2021.4.29 (and 2021.5.20)
- xxiv. Meeting 2021.8.31 @ 10.00 19mppa - Further Consultation

Luton



xxv. Meeting 2021.10.6 @ 10.00 Luton Airport; 2100031VARCON -S106 meeting

In addition to the meetings listed above, you will be aware that matters relating to the breach of condition and the application to vary the condition were discussed at both the London Luton Airport Consultative Committee and the Noise and Track Sub-Committee (minutes of those meetings are available on line via the LLACC links). There were also separate meetings with the neighbouring authorities, firstly following the breach of condition (to address the steps the Council was taking and the response from the airport operator) and subsequently to keep the neighbouring authorities informed in the period leading up to the submission of the Section 73 planning application to vary condition 10 and during the period of determination.

I hope my response is helpful.

Next Steps

If you are not satisfied with my response you can ask for an internal review by contacting us at the address above or by email at FOI@luton.gov.uk

Please set out any specific concerns you have. Please quote the reference number provided above when contacting us.

Should you remain unhappy with the internal review, you can refer your concerns to the Information Commissioner:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Telephone: 0303 123 1113

Reuse of Public Sector Information Regulations

You are free to use the information provided for your own purposes, including any non-commercial research you are doing and for the purposes of news reporting. Any other re-use, for example commercial publication, requires the permission of the copyright holder. You may apply for permission to re-use this information by submitting a request to foi@luton.gov.uk

Unsolicited Marketing

Please note that under the Privacy and Electronic Communications (EC Directive) Regulations 2003 Luton Council asks not to receive unsolicited marketing communications.

Yours sincerely,



Sunny Sahadevan
Head of Planning

Luton

Annex C: Request regarding documentation of pre-application meetings



Sunil Sahadevan
Head of Planning
Luton Council
Town Hall
George Street
LU1 2BQ

By email to: Sunil.Sahadevan@luton.gov.uk

22 July 2022

Dear Sunny,

Re: Disclosure of Documents to assist Luton Airport Planning Inquiry APP/B0230/V/22/3296455

Thank you for your emails of 1st July and 20th July. I note your request that we use the Council's FOI procedure and not David Gurtler to obtain information such as that we had previously requested on 16th June by email, which David had indicated should be submitted as an FOI request.

It took 2 weeks for that request to be refused on grounds of overall cost, and our email suggesting it be treated as individual requests and compromising on the wider-ranging items 6 and 7 has still not received a response after 3 weeks, with an indication we would have to pay for a more rapid reply.

As you know, we are all facing very tight deadlines for production of documents for the Inquiry, and Core Documents are required within the coming week, by 29th July. That is a month and a half after my first request, yet we still have nothing, and no certainty that the information will be provided.

Whilst the Council may, as it has, decide to channel our requests into the FOI process, we regard that as a parallel and quite separate process to requesting and obtaining information to assist the Inquiry. We therefore ask you to honour the Inspector's request that the Parties co-operate in the provision of information which is relevant to the matters to be considered at the Inquiry.

Our requests (repeated below) are relevant in assisting the Inquiry to appreciate "the effect of other consideration on the planning balance", a topic which the Inspector has confirmed will be in scope:

- 1) The original concession agreement between LBC and LLAOL (to which CD8.12 refers)
- 2) All subsequent documents of modification or variation to that concession agreement (CD8.12 being one such example but commercially redacted)
- 3) A year-by-year schedule of the concession fee rebates arising from the growth incentivisation arrangement between LBC, LLAL and LLAOL from 2014 onwards
- 4) The current status of the growth incentivisation arrangement, and if it has ceased any documents relating to the cessation

- 5) A year-by-year record from 2017 of the monitoring performed by the Council's Director of Planning of the terms of the S106 Agreement (clause 4.1(c) on p19 of CD8.42 refers)
- 6) Email or other correspondence between the Council and LLAL, and between the Council and LLAOL, relating to the forecast and actual breaches of noise contour conditions
- 7) Any emails or documents relating to the issue of enforcement of the breaches

A query was raised in the Pre-Inquiry meeting concerning the scope of items 6 and 7 on the list.

In respect of those particular points, we were advised in a much-delayed FOI response on 27th January, that Mr Gurtler [the Council's consultant Planning Officer] had entries in his calendar for nineteen pre-application meetings but that "no hard copies or electronic minutes" exist.

This response appears to be at odds with guidance provided by the Local Government Association that Officers should attend pre-application meetings and take a note for the file, along with notes of telephone conversations and a file of emails. For clarity, therefore, we are asking for disclosure of those file entries relating to the pre-application discussions associated with the first (19/00428/EIA) and second (21/00031/VARCON) planning applications which sought to regularise those breaches.

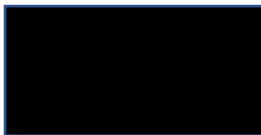
For the avoidance of doubt, we also regard as in scope of requests 4 and 7 above minutes of Luton Exec meetings which touched on the Incentive Scheme the Noise Contour Breaches when discussed in secret session and therefore (as we understand it) not able to be accessed via your website.

In summary, therefore, we look to you urgently to propose a way in which the above disclosures can promptly be made to assist an informed view to be taken by the Inquiry, well before the 29th July deadline, without charging us for time spent processing your decision to route the enquiries via FOI.

It certainly does not seem appropriate for this to "run in parallel with the Inquiry" as was mentioned when we spoke recently, since that approach is incompatible with having hard submission deadlines and the Inspector is unlikely to be happy to have documents drip-fed into the process as it runs.

I hope to hear from you very soon that these disclosures can and will be made early next week.

Yours sincerely,



Andrew Lambourne
Chair, LADACAN

Cc: Joanna Vincent, Gately and Hamer (for PINS)
Richard Wald, QC (for LADACAN)

Annex D: Further information from Growth Incentive Scheme Deed (CD8.12)

161. The 2015 Deed of Amendment and Restatement (the Deed) referred to in paragraph 64 above, refers in its Background text to the previous Deed of Amendment dated 2 January 2014:

162. *“(B) Pursuant to the Concession Agreement, a Concession Fee is payable by the Concessionaire to LLA. In order to help promote future growth at the Airport, the parties entered a deed of amendment dated 2 January 2014 to amend the terms relating to the Concession Fee on the basis that any agreed amendment to the Concession Fee is passed on, in full, by the Concessionaire in respect of qualifying passengers to all airlines providing those qualifying passengers (the "Original Deed of Amendment")*

163. *(C) The intention of the parties is that the reduction in the Concession Fee contemplated under this Agreement will benefit all relevant parties on a commercial basis. The parties further intend that the spirit of the arrangement is for all parties to benefit and if the arrangement is misused by any airline, the Concessionaire, in consultation with LLA may withdraw the benefit of the scheme for that particular airline.”*

164. The Deed defines various terms including:

165. **LONDON LUTON AIRPORT LIMITED**, (formerly known as Luton International Airport Limited), a private company limited by shares registered in England and Wales under company number 2020381 whose registered office is at Hart House Business Centre, Kimpton Road, Luton LU2 0LA (**"LLA"**);

166. **"Airline Passenger Growth Incentive"** means, for each Growth Passenger carried by a Qualifying Airline in an Applicable Period, a [redacted] reduction in the Concession Fee to be paid by the Concessionaire to LLA;

167. **"Applicable Period"** means the period from the Effective Date to 31 March 2014 and each period of 12 months thereafter until the end of the Concession Year which finishes on 31 March 2020;

168. **"Growth Passenger"** means a Passenger carried by an Airline User in excess of the Passenger Threshold;

169. **"Super Growth Period"** has the meaning given to it in clause 4.1; [which refers to a period starting in the second six months of the fourth Applicable Period, which in turn is defined in section 3.2 as 1 Apr 2016 – 31 Mar 2017, with a test defining a **"Super Growth Period"** relating to exceeding a Passenger Threshold by more than 10% in any 12 month period, and a further test defining a **"Second Super Growth Period"** relating to further exceeding that threshold by

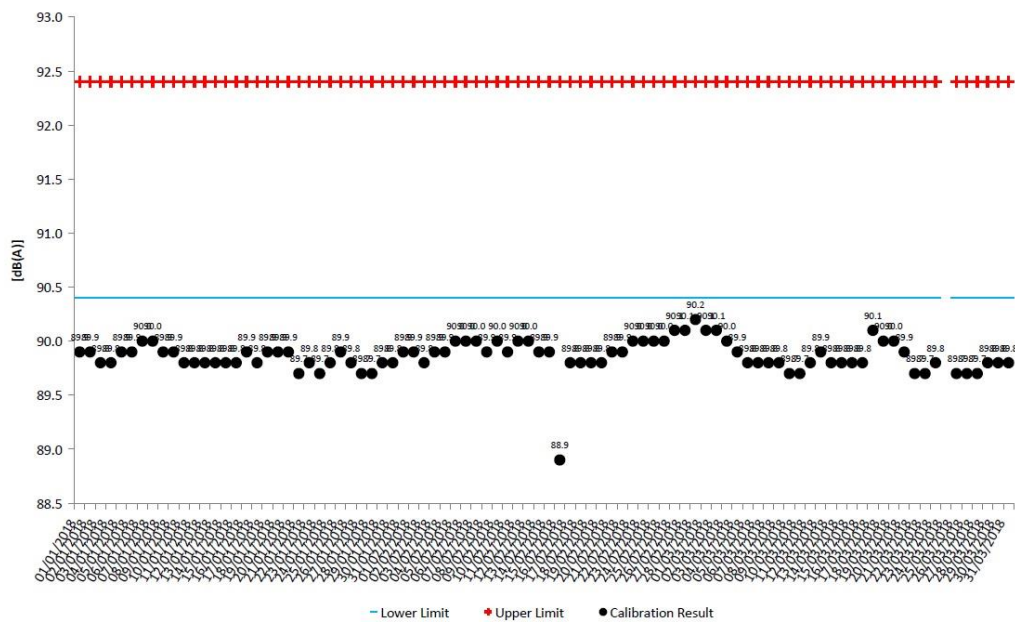
more than 10% in the immediately subsequent 12 month period which, subject to fair play, would lead to the airline being classified as a "**Super Growth Airline**"

170. "**Super Growth Incentive**" means, for each Growth Passenger carried by a Super Growth Airline in the Second Super Growth Period, a reduction in the Concession Fee to be paid by the Concessionaire to LLA in the Applicable Period in which the Second Super Growth Period falls, such percentage to be calculated as if the Airline Passenger Growth Incentive had not been incurred at all;

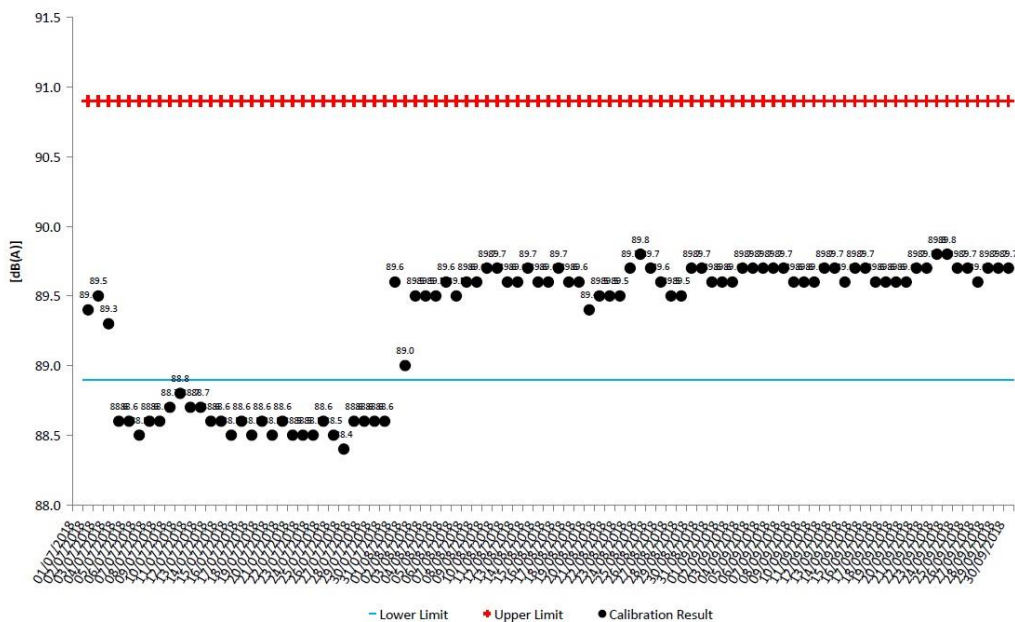
171. Subject to clause 6, an Airline User shall be a "**Qualifying Airline**" if the number of Passengers carried by that Airline User in an Applicable Period exceeds the Passenger Threshold for that Applicable Period.

Annex E: Pages from NMT03 calibration reports disclosed by the Applicant

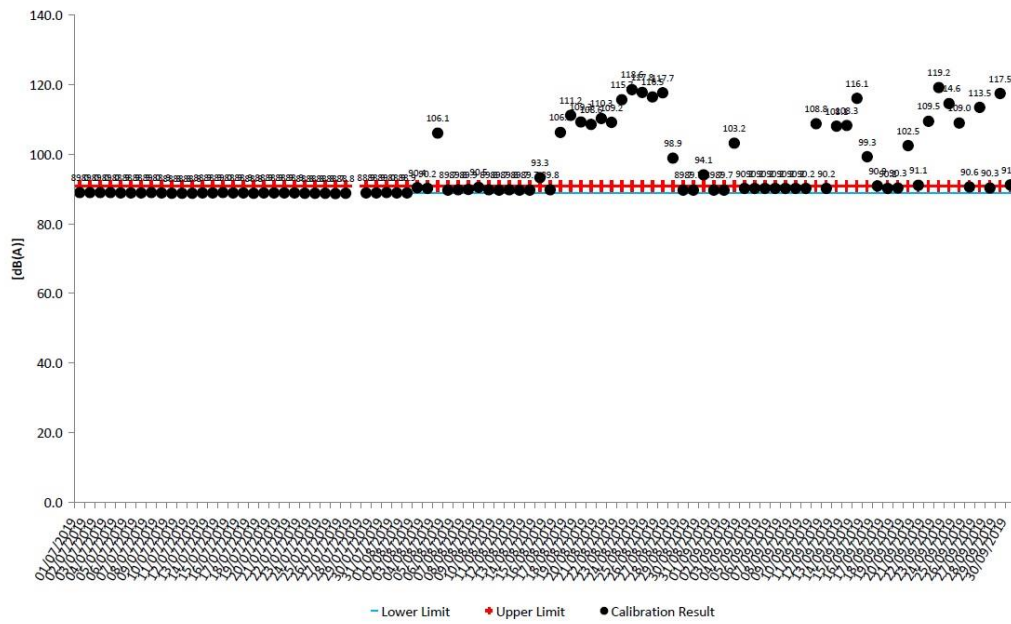
Microphone Check Results
Pepsal End Farm
01/01/2018 - 31/03/2018



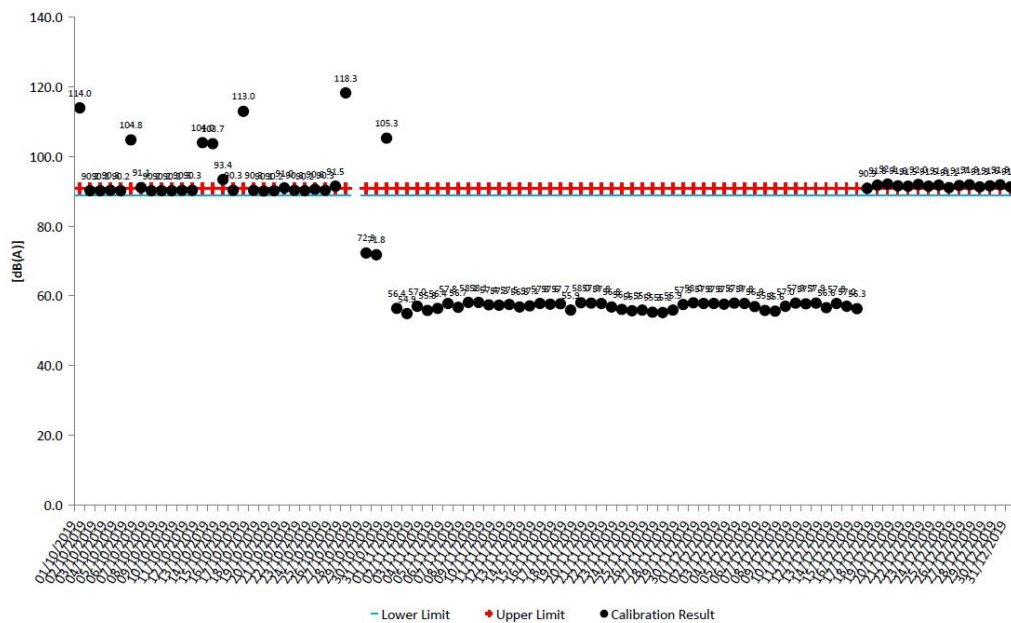
Microphone Check Results
Pepsal End Farm
01/07/2018 - 30/09/2018



Microphone Check Results
Pepsal End Farm
01/07/2019 - 30/09/2019



Microphone Check Results
Pepsal End Farm
01/10/2019 - 31/12/2019



Annex F – Word Cloud from public responses opposed to the Application

