LADACAN

Rebuttal Proof of Evidence to Planning Inquiry

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: 20th September 2022

Contents

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 **Statement** – the "Statement Relating to Operations at the Airport and Forecasting" from LLAOL forming Appendix 1 to Mr Hunt's Proof of Evidence APP-W2.1

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 (km^2)

1) Introduction and Summary

1. This rebuttal proof of evidence has been prepared to respond to points raised in the proofs of evidence of Andy Hunt, Sean Bashforth and Ben Holcombe.

2. My involvement in this appeal and relevant experience are as set out in my Proof of Evidence.

3. Firstly, I rebut an evidently incomplete description of the cause of non-compliance as being events beyond the Applicant's control.

4. Secondly, I rebut the assertion that noise contour breaches fall into the category of uncertainty and set out evidence indicating that prudent operation of an airport subject to noise contour conditions is known to require recognition of uncertainty and the need for headroom to accommodate operational or fleet-related variations.

5. Thirdly, I rebut the method used to derive a "baseline" against which to compare noise impacts by showing that even if it were procedurally correct, it is not self-consistent and is incomplete.

6. Finally, I rebut the basis on which LLAOL argues in Appendix 1 to Mr Hunt's Proof that the Application should be granted in order to avoid economic harm.

2) Causes of breach

7. Mr Bashforth's section "Addressing Non-compliance" overlooks the cause of breach explained by BAP in its report CD8.08, which carries significant weight since BAP has advised the Airport and the LLACC as noise adviser from prior to the 2012 Application. The relevant statements from the report are clear:

   "(Q.1) Had the airport expanded at the rate assumed in the original application would the contours have been exceeded?

   (A.1) No

   (Q.3) Is the late running of the schedule (which might have been predicted) really the issue or is it the rate of expansion ahead of delivery of quieter aircraft?

   (A.3) The main issue is the large growth in passenger demand that has been met. The main issue is the rate of expansion." (my underlining).

8. According to its noise adviser, the breaches were due to the Applicant's demand-led approach, as evidenced in my Proof.

9. Chart 0 below shows number of commercial flights both overall and during the Summer noise contour period, using data from the Applicant's Quarterly Monitoring Reports.

It indicates a small but temporary increase in the night movements in 2017, but no obvious dip in day movements, suggesting that late-arriving daytime flights transferring into the night period is not the primary cause of breach, but instead it was due to the over-rapid growth in overall movements. During the five-year period in question, annual commercial flights increased by some 36% both during the day and at night, rather than the 12% indicated by the upper-end forecasts in the 2012 Application. That rate of growth in ATMs was equivalent to the entire predicted increase from 116,000 to 157,000 (35%) occurring in just 5 years rather than the proposed 15 years – something an expert witness ought hardly to overlook in respect of identifying the likely cause of a noise contour breach.

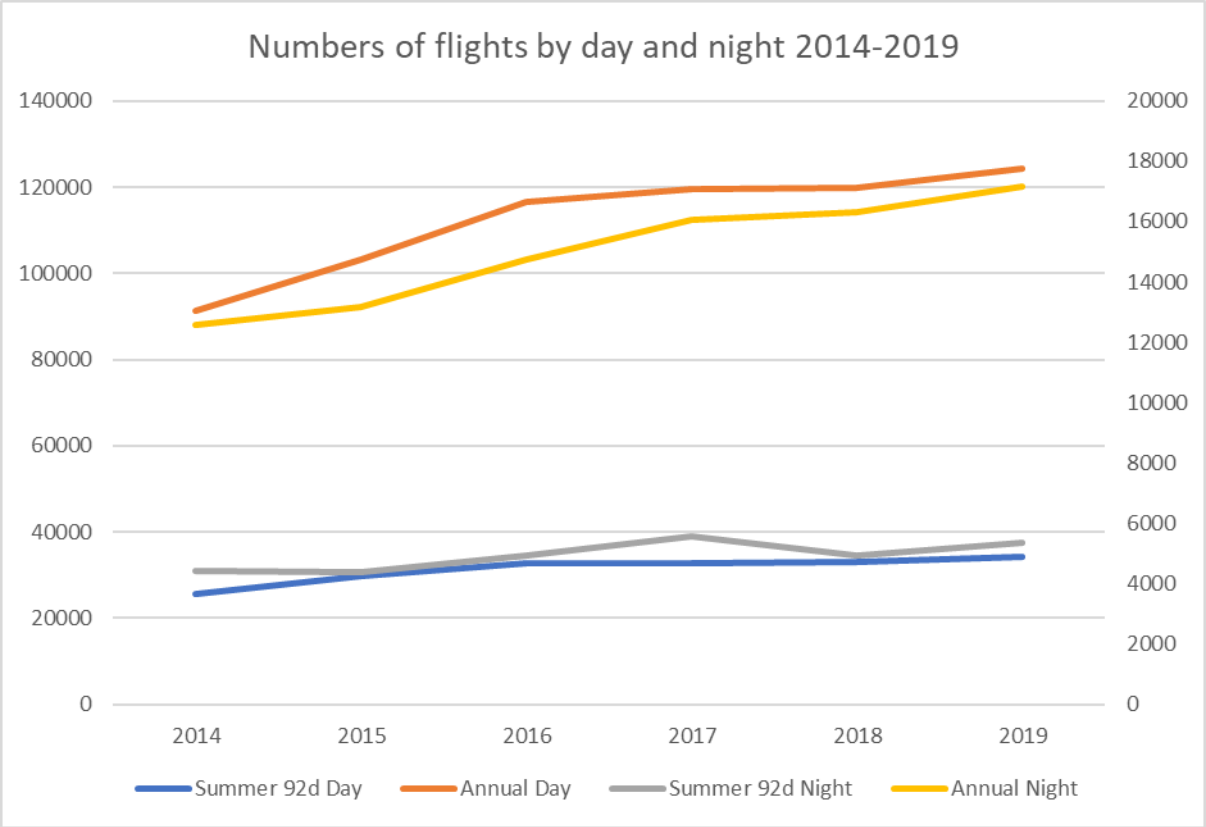


Chart 0: Annual flights (day Orange, night Yellow) and 92-day Summer flights (day Blue, night Grey) Left-hand vertical axis shows Day time flight numbers, right-hand vertical axis Night-time numbers.

3) The need for headroom in noise contours

10. The reasons set out by Mr Bashforth for the contour exceedance fall into the bracket of uncertainties discussed in a recent BAP report[1] which takes into account the specific context of Luton Airport in

[1] CD 13.20 'A11060 N35 DR_2.0 Actual Vs Forecast Contours', BAP, Jul 2019

establishing the importance of leaving headroom in noise contour limits to accommodate uncertainty in operations.

11. A July 2019 report by BAP issued during the application to vary Condition 10 draws on quantified examples in the context of actual experience at the Airport and concludes: *"There is an inherent uncertainty in forecast contours for a number of reasons. Comparing actual and forecast contours at LLA since 2015 finds that although generally small, the differences have been as high as 1.7 km^2. When deciding on what limits to apply for, a key factor was ensuring that any proposed limits would not be subsequently exceeded. In order to achieve this LLAOL have allowed for some buffer above what is forecast to occur, although they do not intend to use it."*

12. Although produced in 2019, this is not new knowledge: the issue of uncertainty was touched on in the Noise Assessment for the 2012 Application[2]. The CAA's 2013 guidance on Noise Envelopes[3] states:

    "… a combination of forecasting on the basis of schedules and a regime of active noise management at the airport would be required to make the system effective, and may also require some headroom to be built into the system, potentially making the envelope tighter than originally conceived."

13. This guidance, coupled with the local knowledge reported by BAP; the recent experience of multiple noise contour breaches despite forecasting, noise management, control, reporting and scrutiny commitments; and the uncertainty cause by the airport operator not being directly control of the fleet mix or the rate of modernisation, overwhelmingly indicates a need for suitable headroom.

14. The ES Addendum and draft S016 Agreement evidence no allowance for headroom in the contour limits. Assertions that noise impacts "are all below 1dB" cannot therefore be relied upon with any confidence when there is no allowance for the inherent uncertainty in contour forecasts, particularly when relying on fleet forecasts and modernisation rates without any evidenced sensitivity testing.

15. The local experience, the inherent uncertainty in forecasting, the need for certainty in noise envelopes, and as indicated in my Proof the method of setting a threshold below the limit of a noise contour such that corrective action can be taken to avoid breach, all indicate that the contour limits should be larger than the bare minimum to contain the predicted noise, and the width of that margin should reflect the uncertainties assessed and evidenced during sensitivity testing and the "overshoot" margin required to allow time for a breach to be rectified. This is the purpose of providing headroom in contour areas.

16. Mr Hunt indicates in his Proof that the headroom is needed in the context of additional flights (para 7.12) – however this is quite different from headroom required to allow for operational uncertainty.

[2] CD13.45 'Noise Assessment Report', BAP, Nov 2012 paragraphs 4.1 and 4.5 regarding fleet modernisation
[3] CAP 1129 Noise Envelopes, CAA, Dec 2013, chapter 6 'Monitoring compliance in operation' paragraph 4

4) Forecast Flow Table

17. Mr Holcombe appears to accept the information provided in the latest ES Addendum[4] at face value without questioning it, despite the long history of queries from Suono during the evolution of this Application[5], and despite the latest revision claiming to have reduced noise impacts. One element which has changed, and therefore required proper consideration, is the forecast flow table.

18. The Applicant provided a replacement Table 8B.1 "Forecast flows for the summer period" of the ES Addendum with missing data filled in[6], from which I have created charts 1-4 below to enable easier assimilation. The Applicant's column headings for the data are:

Chart 1:	2023 18mppa with scheme Daytime
	2024 with scheme Daytime
	2025 with scheme Daytime
	2028 with scheme Daytime
Chart 2:	2023 18mppa with scheme Night-time
	2024 with scheme Night-time
	2025 with scheme Night-time
	2028 with scheme Night-time
Chart 3:	2023 with scheme meeting Current Condition 10 contour Limit Daytime
	2024 with scheme meeting Current Condition 10 contour Limit Daytime
	2025 with scheme meeting Current Condition 10 contour Limit Daytime
	2028 with scheme meeting Current Condition 10 Limit Daytime
Chart 4:	2023 with scheme meeting Current Condition 10 contour Limit Night-time
	2024 with scheme meeting Current Condition 10 contour Limit Night-time
	2025 with scheme meeting Current Condition 10 contour Limit Night-time
	2028 with scheme meeting Current Condition 10 Limit Night-time

[4] CD1.16 Addendum to CD1.09 Environmental Statement (July 2022); CD1.17 Addendum to CD1.10 Environmental Statement Figures and Appendices (July 2022); CD1.18 Addendum to CD1.08 Environmental Statement Non-Technical Summary; CD1.19 Note on ES Documentation (August 2022); CD1.20 ES Tech Note-Final Infographic; CD1.21 Note on ESA 4 Appendix B-Table 8B.1-Aircraft Movements (August 2022)

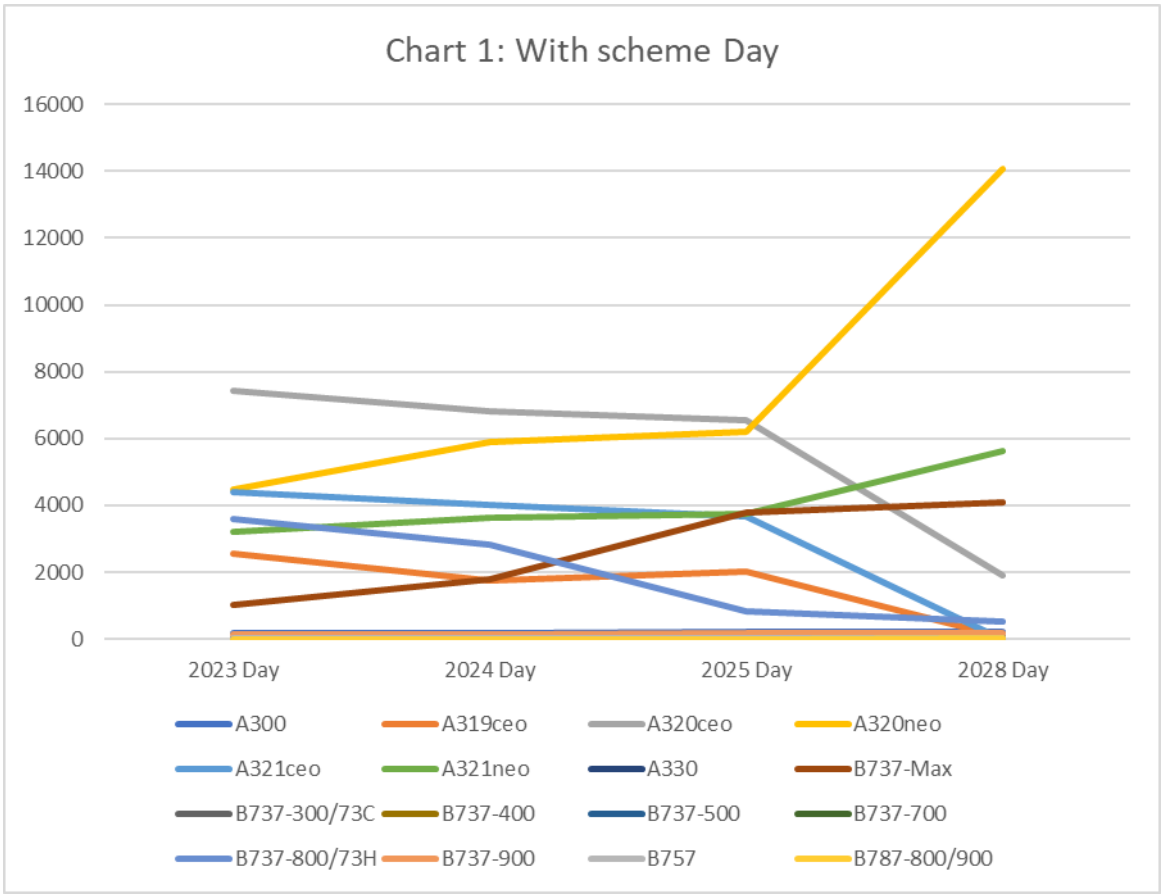
[5] See CD4.02 Noise Review on Behalf of the Council, Feb 2021; CD4.07 Noise Review for Council, Jul 2021; CD4.11 Noise Review for Council on Clarification Response, Sep 2021; CD4.12 Noise Review for Council Nov 2021

[6] The request was made on 3 August (see 'LADACAN information requests tracker dated 18.8.22', Julia Krause, Herbert Smith Freehills) and CD1.21 the replacement Table 8B.1 was received on 25th August as Proofs were being finalised. Markup makes the Table very difficult to assimilate so I copied the data into a spreadsheet and grouped the columns according to strand to assist comparison. Entries shown as '<10' were replaced with 9. Only the commercial aircraft types have been included for the reason given in paragraph 2.1.4 of CD1.21.

Table 1: mapping between columns in Table 8B.1 from CD1.21 and Charts 1-4 below

19. I note that all the columns contain "with scheme" scenarios – the Applicant has not provided "without scheme" flow tables against which to compare.

20. The shape of the two Daytime graphs is essentially the same, the difference being a percentage reduction of the values in the "with Condition 10" graphs. Likewise for the two Night time graphs. These reductions have a consistency in each year which evidences the "manual tuning" as described in the ES Addendum[7].



[7] CD 1.16 Addendum to CD1.09 Environmental Statement, Wood, Jul 2022, para 6.3.2

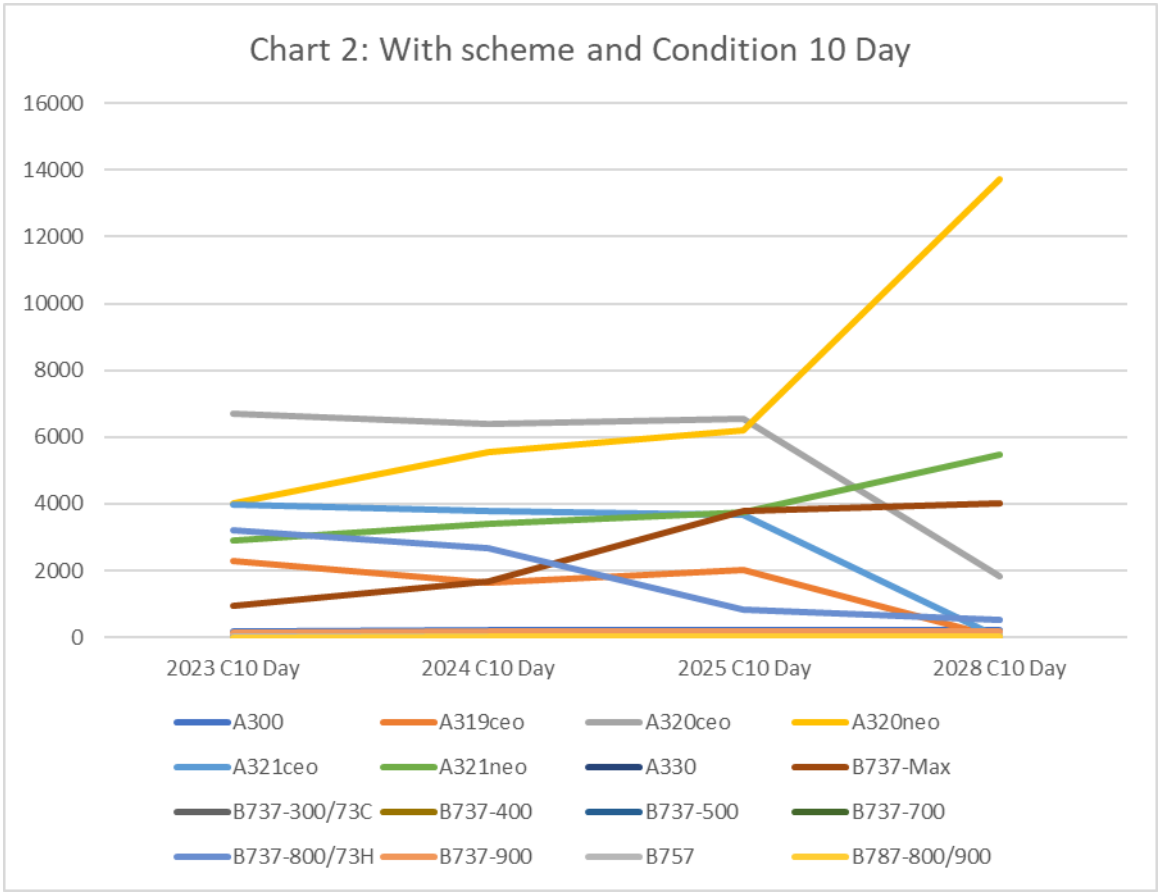


Chart 2: With scheme and Condition 10 Day
16000
14000
12000
10000
8000
6000
4000
2000
0
2023 C10 Day
2024 C10 Day
2025 C10 Day
2028 C10 Day
A300
A319ceo
A320ceo
A320neo
A321ceo
A321neo
A330
B737-Max
B737-300/73C
B737-400
B737-500
B737-700
B737-800/73H
B737-900
B757
B787-800/900

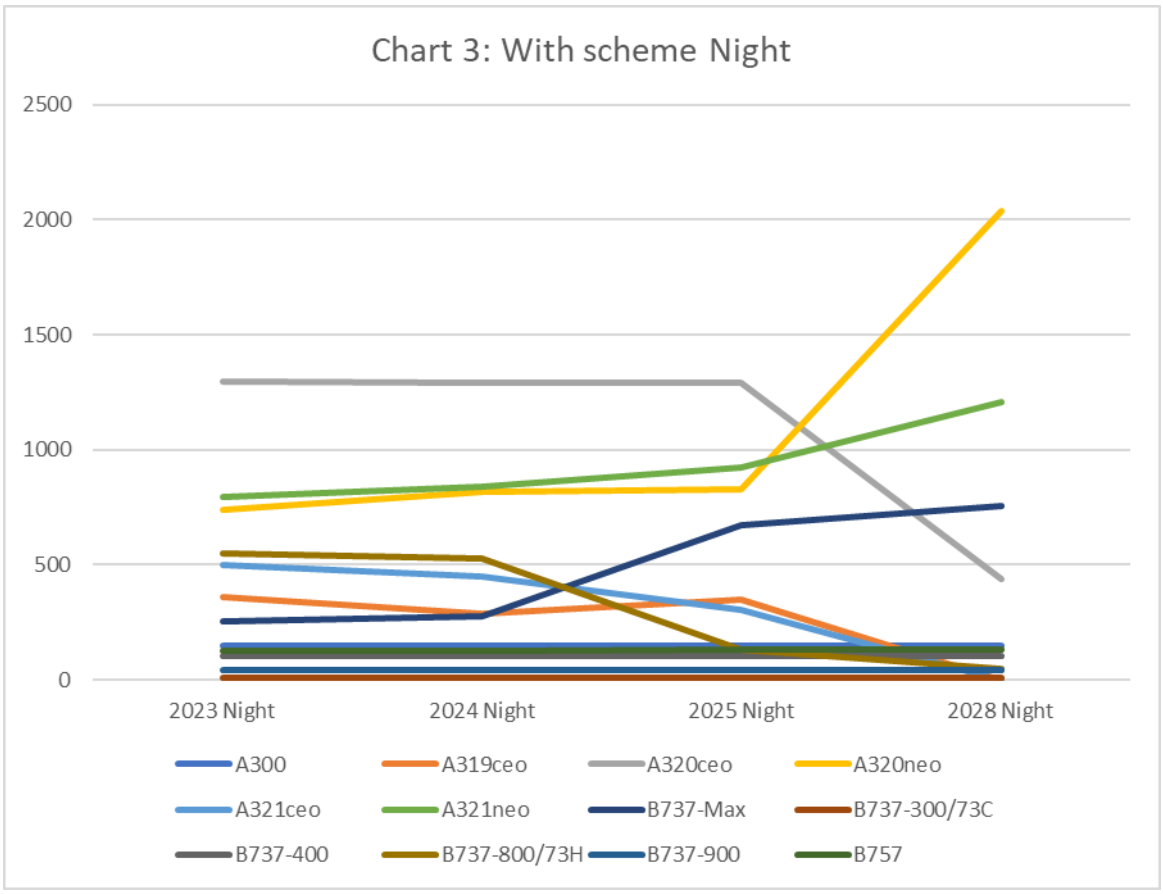


Chart 3: With scheme Night
2500
2000
1500
1000
500
0
2023 Night
2024 Night
2025 Night
2028 Night
A300
A319ceo
A320ceo
A320neo
A321ceo
A321neo
B737-Max
B737-300/73C
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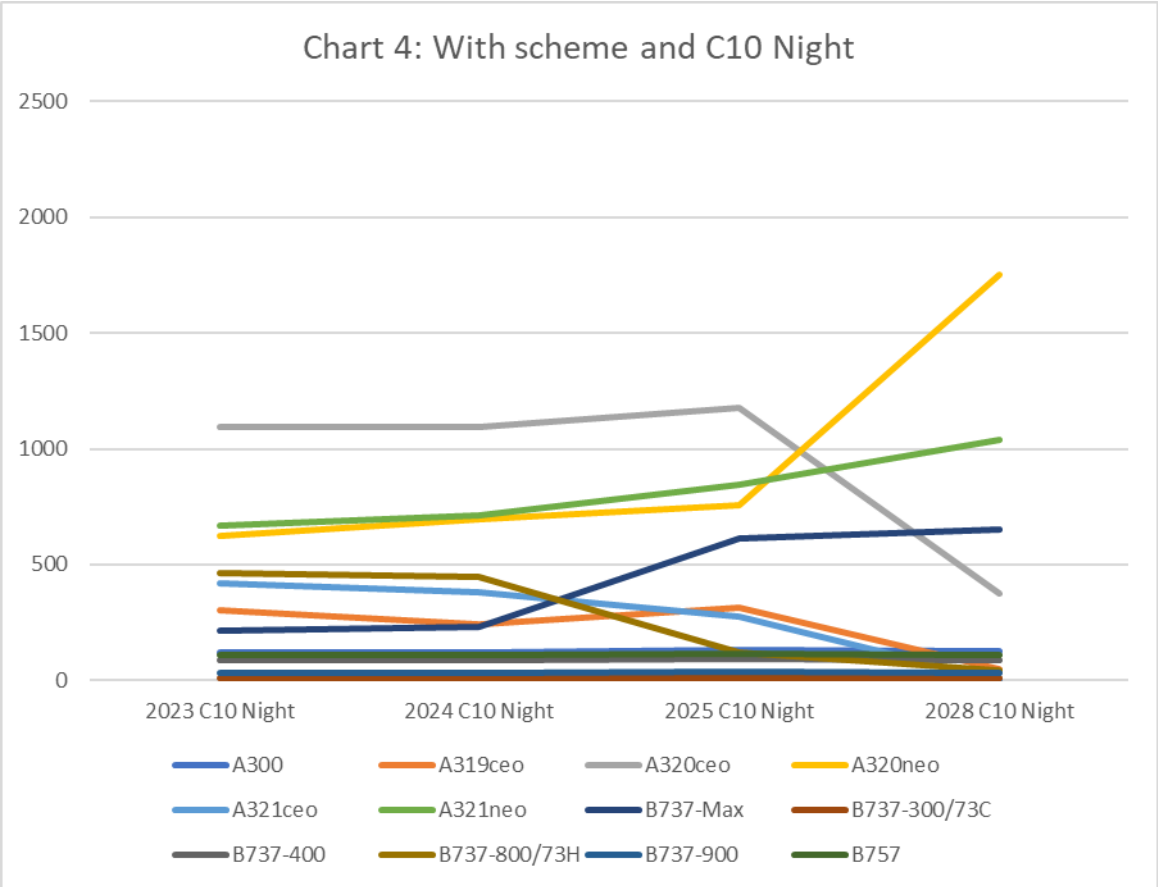
B737-800/73H
B737-900
B757



21. The ES says of the manual adjustment referred to in the paragraph 20 above:

"6.3.2 The baseline for this 2022 ES Addendum is based upon the existing Condition 10 limits. In the 2021 ES Addendum, this baseline was formed by adjusting the 2019 actual flows *so that the resultant km² area within the noise contours matched the existing Condition 10 limits. …*

However, it is understood that this baseline was not based on a calculated ATM schedule and was therefore abstract and potentially confusing. For this addendum, the baseline has been updated based on the ATMs that would meet the Condition 10 limits and taking into account the fleet mix of the year of assessment (whether 2023, 2024 or 2025). This updated approach provides a baseline substantiated with predicted flows, albeit ones which would be difficult for the airlines to operate in practice." (my underlining)

22. Both of the Applicant's approaches to proving a "baseline" are therefore caveated within the ES itself – yet a correct and appropriate baseline is essential to calculating the difference in environmental impact between "Do Something" and "Do Nothing" in the particular instance of a Section 73 Application, as both Mr Roberts and Mr Skelton point out.

23. The latest "baseline" approach adopted by the ES Addendum has led the Applicant and the LPA to describe the additional noise as "negligible" and "not perceptible", although it confirms there would be additional flights. We respectfully encourage the Inspectors to visit and confirm that flights to and from

Luton Airport at low level over or near communities including South Luton, Breachwood Green, Slip End, King's Walden, Bendish, Caddington, Kensworth and Stevenage are anything but "imperceptible".

24. There are a number of obvious weaknesses in the latest "baseline" approach:

- "*the Condition 10 limits*" to which it refers are not fully defined over time, because the strategy to achieve them has not yet been finalised (despite being nearly three years overdue[8]) as indicated in paragraph 59 of my Proof. This is a fundamental problem for this approach to a baseline, since the feasibility and rate of reduction of noise contours to achieve the long term limit in the "Do Nothing" scenario is not yet confirmed, so the reducing contour envelope against which to compare any additional noise impacts is not known – and nor indeed is the feasibility of being able to achieve it.

- According to the ES, the previous "baseline" was *"abstract and potentially confusing"*, and the new "baseline" relies on flows *"which would be difficult for the airlines to operate"*. It therefore seems clear that neither approach is fit for purpose.

- The "baseline" purporting to be the "Do Nothing" scenario is shown in Charts 2 and 4 above. The shape of those charts is essentially the same as the corresponding "Do Something" Charts 1 and 4. This is not unexpected, given the way the numbers have been derived as indicated in paragraph 20. The Daytime figures when reduced by 8-12% for 2023; 5-6% for 2024; 0% for 2025 and 3% for 2028 (with two minor exceptions in 2028 affecting very few flights) give the "with Conditon 10" values. The Night time figures when reduced by 15-16% for 2023; 15-16% for 2024; 8-10% for 2025 and 14-15% for 2028 give the "with Condition 10" values. This does not correspond with claims originating in Appendix 1 of Mr Hunt's Proof that airlines would operate differently, and modernisation would occur more quickly, were the Application to be granted.

25. Mr Holcombe seems to differ from the method used in any case, stating in paragraph 7.3 of his Proof: *"The actual number of ATMs and fleet mix and consideration of the facts which pertained in 2019, is the best measure of assessment of the 2019 position with 2031."* thereby not even reducing the number of ATMs which flew during a year in which both day and night noise contours were breached to provide a "baseline" for comparison.

[8] Condition 10 requires the Applicant to produce by five years from the commencement of Development (ie 1 January 2021) a strategy for the reduction of the day and night noise contours by 2028. Noise contours, being a function of the number of flights and the noisiness of each flight, cannot easily be reduced suddenly except by banning flights, which would require some means of resolving the "slot ownership rights" of the affected airlines. Therefore gradual "tailing off" at a rate defined by fleet modernisation is the most plausible means to achieve reduction – but the strategy to achieve this is still outstanding. As CD8.33 and CD8.44 show, the date for production of a viable strategy was brought forward to January 2020. With various versions having been rejected by the LPA, the latest communication from the Applicant to the LPA is a letter dated 4 January 2021 stating that *"We are now working on a new version of the Noise Contour Reduction Strategy, to include some clarity on the actions mentioned above. We will submit to (sic) completed strategy to Luton Borough Council in the near future."* For documents see 20/00131/DOC on the LPA's Planning Portal. The latest status on this strategy (as reported by the LPA to the LLACC in July 2022) is "In abeyance".

26. Paragraph 6.3.2 of the ES Addendum referred to in paragraph 20 above goes on to list *"The resultant baseline years for comparison"* including *"the 'without Proposed Scheme' 2028 scenario of 12.4 mppa as assessed in the 2014 Planning Permission 2012 ES but updated to take into account the latest knowledge of fleet mix and runway split."* It is not clear from this, nor from Table 8B.1 referred to in paragraph 18 above, what fleet mix has been or even should be used to derive this "baseline". The Applicant indicates in Appendix 1 of Mr Hunt's Proof that the behaviour of airlines would differ in a way worth noting were the throughput cap be increased by 5.6% from 18mppa to 19mppa. It follows that the behaviour of airlines could be substantially different if the throughput cap had instead remained at a level 31% below the 18mppa at 12.4mppa. But the ES provides no insight into that, and assumes that the 2019 fleet mix can be used is a reliable guide, with no justification for that assumption.

5) The Statement from LLAOL

27. LLAOL provided the Statement in Appendix 1 of Mr Hunt's Proof which brings to the table significant new information upon which I briefly comment here.

28. Paragraph 11 of the Statement confirms, as indicated in paragraphs 50, 51 and 148 of my Proof of Evidence (LADACAN-W4.1), that the Applicant can use schedule declarations to ensure capacity is not exceeded, and therefore could and should have done so from 2016 when the first breach was forecast.

29. Paragraph 60 of the Statement provides "Without Scheme" and "With Scheme" numbers of flight movements and passengers, whereas the flow data in ES Appendix 8B.1 (CD 1.21) does not identify any "Without scheme" information.

30. Paragraph 69 of the Statement suggests that the passenger cap serves to *"suppress modernisation at Luton"*, and that even *"slight limitations on operations"* may result in a route moving from profit to loss. These statements do not stand the test of basic common sense and I rebut them: many airports have passenger caps, including Luton, yet modernisation has occurred and is occurring. All major airports with noise controls have slight limitations on operations, yet airlines continue to fly from them.

31. Paragraph 70 of the Statement heralds an argument which in my opinion is both unreasonable and indefensible given the circumstances, particularly the history leading to the noise breaches as set out in my Proof. The Applicant is indicating that refusal of this retrospective Application to normalise and legitimise three years of non-permitted development (which caused significantly excess noise over communities – noise harms which cannot be mitigated – and correspondingly excess carbon emissions through facilitating airlines to fly more unmodernised aircraft than its planning permissions allowed) would cause adverse impact.

32. Paragraph 72 of the Statement provides some indication of the harms caused by the non-permitted actions of the Applicant with far more clarity than the impenetrable ES: in 2023 30 daytime movements in excess of what was permitted, and 13 movements at night, from the 2019 schedule.

33. In paragraph 74 of the Statement, the problems of removing slots are for the Applicant to resolve: it is after all a professional airport operator, and by its actions or inactions these excess slots have been released. It appears therefore, that as well as inflicting environmental harm, the Applicant has put itself into a position where it may need to inflict commercial harm to regularise the situation. I respectfully invite the Inspectors to agree that this is not a valid planning reason to grant the Application.