

**Town and Country Planning Act 1990, s77**

**Town and Country Planning (Inquiries Procedure) (England) Rules 2000**

**Application by London Luton Airport Operations Ltd**

**For Variation of Conditions 8 (Passenger Throughput Cap), 10 (Noise), 22 (Car Parking Management), 24 (Travel Plan) and 28 (Approved Plans and Documents) to Planning Permission 15/00950/VARCON (Dated 13 October, 2017)**

---

**OPENING SUBMISSIONS ON BEHALF OF LADACAN**

---

**Introduction**

1. LADACAN is a community group which informs, liaises with and represents the interests of people across the local area who are adversely affected by the environmental impacts of Luton Airport, specifically in respect of noise, but also with a growing focus on its carbon emissions in light of climate change.
2. The concerns of LADACAN's members are shared by other community groups and local town, parish and district councils as well as Hertfordshire County Council. Beyond its effects on South Luton and villages in central Bedfordshire, the alignment and position of the runway is such that much of the environmental impact falls on the towns and villages of rural north and west Hertfordshire, west

into the Aylesbury Vale and the Chilterns, and north into Huntingdonshire, all outside the area of jurisdiction of Luton Borough Council (“LBC”).

3. LADACAN engages with regulators and policymakers in discussions alongside representatives of people affected by other London and regional airports, as well as participating in Luton’s airport consultative committee, its “Noise and Track” and “Noise Insulation” sub-committees, and its “Airspace Change” focus groups.

### ***This Application***

4. Section 73 of the Town and Country Planning Act 1990 (“s73”) allows for an application for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted and for alternative conditions to be imposed instead.
5. The existing planning permission is (among other planning controls) subject to an annual passenger limit of 18 million passengers per annum (mppa) until 2028 and noise contour limits. That permission (Ref: 15/00950/VARCON) is itself the result of an amendment to a condition attached to the 2014 permission to increase capacity at Luton Airport following an application made in 2012 (Ref: 12/01400/FUL) (“**the 2012 Application**”).
6. On 11 January 2021 the Applicant made an application under s73 (“**the s73 Application**”) for:

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

7. The s73 Application seeks, among other things, an increase in the passenger cap from that currently permitted under 15/00950/VARCON; and an increase in the noise contour limits, a delay in reaching the original long-term contour reduction limit, and an extension of time to produce the long-term contour reduction strategy.
8. Both the passenger cap and noise contour limits were agreed in 2013, after careful assessment of the 2012 Application, to be necessary to protect residential amenity and to accord with the Luton Local Plan and national planning policy for the following reasons, respectively:

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

*10 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.”*

9. The process of assessing the 2012 Application recognised the heavy environmental impacts which would result from the near-doubling of capacity from the then 9.6mppa to 18mppa over a 15-year period to 2028. A key means of noise mitigation was modernisation of the fleet, expected to start in around 2017, by introduction of aircraft with “new engine option” slightly less noisy and more fuel-efficient engines. Thus a balance between growth and mitigation was to be achieved, and this balance is reflected in the way the noise contour limit operates.

### *Unauthorised Development*

10. The s73 Application does not arise in the normal course of planned expansion of airport capacity. This is instead a retrospective application which seeks to regularise three successive years of worsening breach of a statutory 92-day Summer noise contour limit – first by night and then in 2019 by both day and night. The passenger cap was also reached in 2019, 9 full years ahead of both the agreed expiry of the passenger cap and the achievement of a long-term reduction of noise contour areas in 2028.
11. Put shortly, as Mr Lambourne will explain, this is an application born of over-rapid and non-mitigated increase in throughput which delivered 15 years' growth in just 5 years which caused a rapid and out-of-balance increase in impacts. The evidence compellingly indicates that this was avoidable, and could and should have been avoided.
12. Furthermore it is apparent from the documentary evidence that LBC was aware of and involved in the accelerated growth without taking any effective steps to enforce against known planning breaches.

### *Environmental Impact Assessment*

13. The s73 Application was made in January 2021 on the withdrawal of a previous application made in April 2019 to modify the noise contour areas. By the time it was considered by LBC's Development Control Committee in Nov/Dec 2021, some three rounds of review and consultation had occurred, and multiple issues raised by experts and stakeholders had led to multiple revisions to the documentation, which

was then judged to be sufficiently settled to be determined. The s73 Application was advertised as being in breach of the Local Plan because of its noise impacts.

14. Since then, further revisions have been made in the ES Addendum affecting among other things the baseline comparison and the fleet forecasts – both essential to noise impact assessment. Following this, LBC has changed its position and interprets the revised noise impacts as “negligible”.
15. Mssrs Roberts and Lambourne show that these revisions to the EIA were ill-founded and that the change of stance of LBC is therefore unreliable. LADACAN therefore challenges assertions that the impacts of the proposal would be adequately mitigated, that overall this would constitute sustainable development, that it would lead to betterment and that long term noise impacts would be reduced.

### *This Inquiry*

16. LADACAN will seek to assist the Inquiry as the key issues identified by its Inspectors are addressed by means of its experienced and expert witnesses and the documentary evidence which it has produced.
17. Mr Lambourne will draw attention to the overwhelming public opposition to the s73 Application and its predecessor. The most egregious excess noise and carbon impacts were experienced during what the Applicant has described as its busiest ever year of 2019.
18. In that year, by the Applicant’s own admission some 30 flights during the day and 13 by night were being flown during the busy summer period over and above what was properly permitted, largely by aircraft which were unmodernised and

therefore some 18% less fuel efficient, creating more noise and more carbon emissions.

### *Climate Change*

19. The Inquiry is concerned with the implications of the proposal for meeting the challenge of climate change. The evidence and testimony of Ms Hewitt shows that any increase in carbon emissions, however small, is of significance in light of the weakness of national measures intended to mitigate the climate impact of aviation, Luton's own declaration of climate emergency and the need for airport expansion projects to weigh any such increases in the balance.

### *Noise*

20. The Inquiry is concerned with the effect of noise associated with the proposal on health, quality of life, and the character of the area. These are matters of significant concern to local people including the members of LADACAN and those groups and councils it is representing.
21. It is LADACAN's case that essential foundations upon which the assessment of impacts depends are unreliable, the noise impacts are likely to be larger than now stated and that therefore the conclusions of this assessment are unsafe,
22. Mssrs Roberts and Lambourne will show that the information which the ES presents as the basis for its comparative noise assessment is confused, ill-founded and likely to be erroneous.

### *Socio-economic impacts*

23. The Inquiry is concerned with the socio-economic implications of the proposed development. Dr Chapman will show that much of the evidence presented by the Applicant and LBC has emphasised the socio-economic impacts of the Airport in general, seeking to use this to influence the planning balance rather than focusing on the socio-economic impacts of the s73 Application itself.
24. The Applicant is the body responsible for ensuring that the impacts of capacity growth since 2013 remained within planning limits including the noise contour areas and the passenger cap, yet its own reporting indicates it failed to do this. For the Applicant now to claim that its business and the local economy would be damaged by having to respect those limits, despite having previously taken the profit benefits of exceeding them for three years, is an impermissible attempt by the Applicant to have its cake and eat it.

### *Development Plan*

25. The Inquiry is concerned with whether the proposed development would be consistent with the Development Plan and other relevant policies.
26. As indicated above at paragraph 14, the s73 Application had been advertised by LBC as not conforming to the Local Plan but recent changes to the ES have been interpreted by LBC as adequate evidence of conformity. LADACAN disagrees with this change in position and LADACAN's witnesses will show that this is an unsafe interpretation.

### *Other considerations*

27. The Inquiry is concerned with the effect of other considerations on the overall planning balance.
28. LADACAN shares concerns expressed by the Joint Local Authorities, stakeholders and member of the public in their representations that the rapid growth of passenger throughput ahead of the expected timeframe for fleet modernisation, leading to breaches which started in 2017 and worsening thereafter, demonstrates a failure of management by the Applicant. Mr Lambourne shows that this was exacerbated by apparent failure of scrutiny and prolonged under-enforcement by LBC, which have detracted from community confidence in the planning system and will have caused significant past harms which cannot now be mitigated.
29. LADACAN shares concerns expressed by members of the public in their representations that the unusual, if not unique, circumstances in which this major airport is ultimately owned by a Local Planning Authority which benefits financially, both directly and indirectly in proportion to its passenger throughput, is at least a theoretical conflict of interest.
30. Guidance on how such conflicts should be resolved to assure probity serves to emphasise that such measures appear not to have been taken. Agreements reached between the parties (including the LBC's airport-owning company London Luton Airport Limited, trading as Luton Rising) give cause for further concerns over governance.
31. Mr Skelton offers suggestions to how such concerns could be addressed through appropriate conditions, should the Inspectors be minded to grant the Application.



## **Conclusion**

32. For the reasons outlined here and to be elaborated by LADACAN witnesses in the course of this Inquiry, it is submitted that the planning balance in this case lies in favour of a refusal rather than a grant of the s73 Application.
33. Alternatively, any grant of the s73 Application should impose conditions, informed by an updated and proper noise assessment, to ensure reliable enforcement of any further planning breaches.

**RICHARD WALD K.C.**  
**Counsel for LADACAN**

**27 09 22**

**39 Essex Chambers**  
**81 Chancery Lane**  
**London WC2A 1DD**