

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)

CLOSING SUBMISSIONS ON BEHALF OF LADACAN

Introduction

1. The Luton and District Association for the Control of Aircraft Noise (“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 Council¹. 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

¹ CD 3.05 contains representations from individuals, community groups and Councils opposed to the Application

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 Airport’s “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. Whilst the underlying original planning permission may not be altered in such applications, it is open to the decision-maker determining a s73 application to review all existing conditions and to attach such new conditions as may be considered appropriate.
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 which include a requirement for long-term noise reduction by 2028. 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, as confirmed by Mr Gurtler and Mr Thornely-Taylor in xx. This was expected to start in around 2017², by the introduction of modernised aircraft with “new engine option” slightly less noisy and more fuel-efficient

² CD 13.45 ‘Noise Assessment Report’, Bickerdike Allen report, Nov 2012, PDF 13/59, internal page 36, para 4.2

engines. Thus a balance between growth and mitigation was to be achieved, and this balance is controlled in the way the noise contour limit operates: more aircraft can be flown provided their individual noisiness is reduced.

10. However, as Mr Gurtler confirmed in xx, growth at the Airport did not work out as planned. In fact, he described the Airport as “a problem” to the LBC due to its “accelerated” growth. That problem resulted in a breach of the noise contour limits in 2017 within just four years of the grant of the 2012 planning application in 2014. Failure of throughput control led to this breach worsening in 2018 and again in 2019. Far from being temporary occasional breaches, these were consistent and repeated breaches of the key noise contour control condition put in place to protect residential amenity and to accord with local and national policy³.

Unauthorised Development

11. The s73 Application, therefore, 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 the 92-day Summer noise contour limit – first by night and then in 2019 both by 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.
12. As the written and oral evidence has shown, this is an application born of over-rapid and non-mitigated increase in throughput which delivered 15 years’ growth in just 5 years, causing a rapid and out-of-balance increase in impacts, as confirmed by both Mr Gurtler and Mr Bashforth in xx. The evidence of Mr Lambourne in

³ CD 6.03 ‘2012 Decision Notice’, LBC, PDF 7/33, Condition 12 (as it was then numbered)

response to xx by both Mr Strachan and Mr Steel compellingly indicates that this situation was avoidable and should have been avoided.

13. Furthermore, it is apparent from the documentary evidence that LBC was aware of⁴ and involved in the accelerated growth⁵ without taking any effective steps to enforce against the resultant planning breaches.

Environmental Impact Assessment

14. The s73 Application was made in January 2021 on the withdrawal of a previous application made in March 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 socio-economic impacts of the proposal were specifically scoped out of the EIA on the basis that they were found to have no likely significant environmental effects. The s73 Application was advertised as being in breach of the Local Plan because of its noise impacts.
15. Since then, further revisions have been made in the ES Addendum affecting among other things the baseline approach⁶ and the fleet forecasts – both essential to noise impact assessment (accepted by both Applicant and LBC in xx). Following this, LBC has changed its position and interprets the revised noise impacts as “negligible”.

⁴ CD 17.10 'CPR Q4 2017 Corporate Performance Data Pack for Q4 2016-17', LBC, PDF 8/46

⁵ CD 8.12 'Deed of Variation' between the LBC, LLAL, the Applicant and London Luton Airport Group Limited, Aug 2017 sets out the terms of a financial Growth Incentive Scheme to reward airlines delivering year-on-year passenger growth

⁶ CD 1.16 'Volume 2 Environmental Statement Addendum', Wood, July 2022 PDF 50/98, internal p44, paragraph 6.3.2

16. Msrs Roberts and Lambourne have shown that these revisions to the EIA were ill-founded and that the change of stance of LBC is therefore unreliable. LADACAN 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.
17. In any event the lack of clarity about the baseline assumptions adopted by the Applicant falls foul of the requirements of the EIA Regulations 2017⁷ (see below).

This Inquiry

18. LADACAN has sought to assist the Inquiry in relation to 5 of the 7 key issues identified by its Inspectors through its written and oral evidence and by testing evidence adduced by other parties. Those issues, which themselves hark back to those identified in the call-in letter, are as follows (with those addressed by LADACAN in italics):

- (i) *The implications of the proposal for meeting the challenge of climate change.*
- (ii) *The effect of noise associated with the proposal on health, quality of life, and the character of the area.*
- (iii) The effect of the proposal on air quality.
- (iv) The effect of the proposal on sustainable transport objectives and transport infrastructure.
- (v) *The socio-economic implications of the proposed development.*
- (vi) *Whether the proposed development would be consistent with the Development Plan and other relevant policies.*
- (vii) *The effect of other considerations on the overall planning balance.*

19. Unlike the Applicant and LBC, LADACAN has not cherry-picked evidence or relied one-sidedly on material which favours its case. Instead, whether in relation to policy or technical evidence it has accepted and drawn to the attention of the

⁷ CD 9.04

Inquiry provisions and points which move in both directions. It acknowledged, for example, that national policy favours aviation growth and making best use of existing runways, albeit subject to the particular impacts of a given proposal. And on the technical evidence it has considered, it has not shied away from drawing to the attention of this Inquiry anomalies or errors, whether or not they support or undermine the Applicant's noise case⁸. By contrast, neither the Applicant's nor LBC's witnesses have been prepared to adopt such an even-handed approach to the evidence, or to adopt the approach suggested to Ms Hewitt in xx of considering both the pros and the cons in a neutral way. Mr Gurtler struggled to answer a hypothetical question for fear that it might be interpreted as any form of concern or reservation about the proposal (hardly the stance of a truly independent LPA). Mr Hunt considered socio-economic impacts with a very narrow ambit (effectively jobs at the Borough level only, including any GVA consequences thereof) and without any consideration for the cons, as well as the pros. He confirmed in Re-examination that he considered that there were no cons, but this simply begged the question, how do you know if you don't check? Mr Bashforth relied on documents and the history of this matter before his recent involvement when it suited the purposes of his client, but insisted, when it came to evidence which was less convenient to those purposes, that he was not then involved and could not therefore assist the Inquiry. Perhaps most tellingly of all, the Applicant and LBC were not prepared to give answers to members of the public which they would give to their own advocates or the Panel. (see questions asked by Mr Wingfield of Mr Bashforth and by Mr White of Mr Gurtler and compare the answers given to those provided to Ms Hutton and Inspector Clegg in re-examination and questions from the Panel respectively)

20. Furthermore, the Applicant submitted late information in its own statement provided as Appendix 1 to Mr Hunt's Proof of Evidence which does not appear in

⁸ xx of Mr Roberts by Mr Strachan on evidence of over-prediction and under-prediction

ES4, was not authored by Mr Hunt, was not consulted on⁹, and could not be tested in evidence by questioning a forecaster, because despite the wealth of professional experience and expertise fielded by the Applicant, and despite its own evidence that much of its case depending on fleet mix and forecasting, it saw fit not to provide the Inquiry with a relevant witness whose evidence could be tested by xx.

21. Lest their contributions to this Inquiry be forgotten, we heard, in the earliest stages of the Inquiry programme, from some of the members of the public who have raised overwhelming opposition to the s73 Application and its predecessor¹⁰. It was difficult not to have been moved by some of that testimony. Mr Graziano reported light pollution, cargo planes at night and his home shaking due to aircraft noise. Cllr Timmis noted that modernised A321neo aircraft were not delivering expected noise benefits. Mr Leadbeater expressed deep concern about effects on climate change and the natural environment. Mr Wingfield noted individual aircraft events are what causes disturbance. Mr Smith highlighted traffic holdups, crowded trains and rat-running. Mr White felt excluded from democratic debate by commercial sensitivity over the Airport, and felt that jobs figures were overstated, with local funding cuts being at odds with monies paid to the airport operators, as well as concern over large loans tied up in airport-related infrastructure and projects, in the face of poverty in Luton. Mr Boswell's evidence on the matter of his escalating noise complaints was striking, ending in the indignity of police intervention. Others reported being woken at 6am, and even being forced to move as a result of the increasing noise impacts.

⁹ Mr Bashforth accepted in xx that the recent baseline material contained within Mr Hunt's App 1 (and therefore also any further gloss of reinterpretation given to this in the course of the Inquiry) was produced outside the relevant consultation period.

¹⁰ According to the LBC Planning Portal predecessor to the Application, 19/00428/EIA (to vary Condition 10 to increase the noise contours) received 534 public comments opposing and 2 supporting. The current Application received 923 public comments opposing and 205 supporting.

22. Of course the most egregious excess noise and carbon impacts were experienced during what the Applicant has described as its busiest ever year of 2019.
23. In that year, by the Applicant's own admission¹¹ 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.
24. With those remarks by way of introduction, I now turn to the specific issues raised by the Panel, so far as LADACAN can offer assistance.

(i) **Climate Change** – *“The implications of the proposal for meeting the challenge of climate change.”*

25. It was a frequent inference of the Applicant's evidence generally that lower assessment standards could be applied given the relatively modest increase sought by this Application. If that indeed informed the approach adopted (and the nature and relatively limited extent of both the socio-economic and acoustic assessments suggest that it indeed was), then whether in relation to climate change or any other aspect of this case, it was misguided.
26. The evidence of Ms Hewitt has showed 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, LBC's own declaration of climate emergency, the magnitude of the challenge that climate change presents (these closings are being presented whilst the world's leaders meet in Sharm El

¹¹ APP-W2.1, Proof of Evidence of Mr Hunt, PDF 28/54, internal p26, para 6.39

Sheikh for COP27) and the need for airport expansion projects to weigh any such increases in the balance. Inspector Clegg clarified, through questions to Ms Hewitt, that the project would result in an increase in aviation emissions compared to a 'no development' baseline.

Jet Zero

27. This is all the more so, given that all three climate change experts who appeared at this inquiry were agreed that the measures contained within the Jet Zero strategy are aspirational in nature and consequentially characterised by inherent uncertainties, with Dr Hinnells for the LBC going further than this in describing the strategy as "high risk and incomplete".
28. More specifically, Dr Osund-Ireland accepted in xx that while some of the technologies relied on in Jet Zero exist, challenges remain about bringing them to market and scaling them up. He described the capacity of the 44 Greenhouse Gas Removal plants that he claimed (in oral evidence) to be in existence globally to capture carbon as 'absolutely miniscule'. He accepted that there was inherent uncertainty in what the various measures in Jet Zero may yield in terms of emission reduction.
29. Dr Hinnells, for LBC, went further, agreeing (as indicated above) with the characterisation of Jet Zero in Ms Hewitt's evidence that it is both high risk and incomplete. He said that he continues to hold the views outlined in his article about the nature of the assumptions in Jet Zero which he considers to be highly aspirational. He accepted that when he suggests in his article what 'critics' will argue he is, himself, one of those critics. On fuel efficiency neither he personally nor his consultancy, Ricardo, thought the 2% per annum to be realistic given the Government's limited vires in this area (i.e. here as with fleet modernisation, the

Inquiry has no basis upon which to conclude that the airport is capable of controlling or even influencing the practices of individual airlines). There was considerable uncertainty in relation to the SAF assumptions. He noted that while Jet Zero relies heavily on carbon sequestration technology this is not currently in place in the UK, and said that there are policy, price and technical uncertainties about its deployment.

MBU

30. LADACAN accepts that MBU, in common with other forms of aviation policy, lends support for aviation growth, albeit (as all witnesses, climate change and planning accepted) subject to consideration of the particular features of a given proposal and their environmental impacts.
31. Furthermore, both Dr Osund-Ireland and Dr Hinnells, accepted that changes to climate policy and targets meant that analysis in MBU that applied a planning assumption of 37.5 Mt CO₂ up to 2050 were no longer valid and that alternative emissions assumptions needed to be made from the sixth carbon budget. The upshot of this, which was not contested by the LBC or Applicant is that the levels of airport growth allowed for in MBU have been superseded by Jet Zero (which allows for increased levels of growth while nevertheless delivering larger emissions reductions) and that such policies or strategies need to be read alongside other policies and not slavishly followed to the letter.
32. Ultimately, whilst the emissions consequences of the proposal are relatively small they cannot be discounted and given the very serious challenge of achieving Net Zero and the aspirational nature of the measures to address such emissions contained in the Jet Zero policy, LADACAN submits that the socio-economic benefits of the application scheme would need to be properly assessed and

demonstrably significant. As we will see when LADACAN turns to consider the socio-economic issue below, neither can be shown in this case.

(ii) **Noise** - *The effect of noise associated with the proposal on health, quality of life, and the character of the area.*

(A) Preliminary

LADACAN'S approach to Noise Assessment

33. LADACAN's objective as a Rule 6 Party has been to assist the Panel in testing the Applicant's claims regarding the effects of noise resulting from the Proposal. As it has made clear throughout this Inquiry, it does not possess the necessary resources to set up its own noise model of the Airport. Nor does it have access to the noise monitoring and radar feeds, nor to the Airport's flight scheduling systems. Its approach has therefore by necessity been to request and analyse the correlated noise monitoring and flight data exported from the Airport's Noise and Track system following the same methodology used by Bickerdike Allen ("BAP"), and then to make that analysis available to the Inquiry.
34. The Inquiry has heard the resulting discussion and has seen the evidence from the data and how it relates to other information in the ES assessment. LADACAN hopes that this will assist the Panel in providing clear and evidenced recommendations to the Secretaries of State on matters relating to the effects of noise associated with the Proposal.
35. LADACAN has also provided, in Mr Lambourne's Proof, the results of extensive research into the history leading up to the noise breaches, which evidences its areas of concern relating to the effect of other considerations on the overall planning

balance in paragraphs 76-82 below, and significant concerns over accuracy of noise measurements feeding the contour model as summarised in Annexes A and B.

Accelerated Growth

36. The history of the accelerated growth at Luton Airport since the 2014 permission and its consequences in repeated noise contour breaches within just 4 years underline the need for more robust conditions and controls in the event that this Application is granted.

37. Mr Gurtler confirmed in xx what LADACAN regards as the nub of the problem:

*'It's been a difficulty that we as a local planning authority have had with the airport operator in that the airport operator has obviously seen - this is my opinion - has seen 18 million passengers as something that it's allowed to go up to and there were breaches in 2017, 18 and 19.'*¹²

38. Mr Gurtler here encapsulates a key plank of LADACAN's case: the Applicant is subject to two planning conditions, 8 and 10, which work together *'hand in glove'* as Mr Gurtler put it, to control noise. The Applicant cannot claim that 18mppa is a target it has the right to achieve without first ensuring it has delivered the mitigation through fleet modernisation which provides noise mitigation and which is enshrined in condition 10 for all the reasons set out in that condition¹³.

39. LADACAN respectfully invites the Panel, on the evidence, to take full account of the Applicant's failure properly to understand and/or abide by its noise planning controls. Its actions speak louder than the words in its Noise Action Plan, which boldly promises *'We will operate within our agreed contour area limits'*.¹⁴

¹² Inquiry video recording Nov 10th pm starting at around 00:37:45

¹³ CD 7.03 '2015 Decision Notice for Variation', Oct 2017, PDF 5/14, Condition 10

¹⁴ CD 13.11 'London Luton Airport Noise Action Plan 2019-2023', PDF 14/23, section 3.4

(B) Flaws in the Applicant's Approach to Noise

Achieving the Necessary Noise Reductions

40. To achieve the necessary noise reductions, the Applicant must reduce its long term 92-day summer noise contours by a least 0.1 sq km compared to the current condition limit, by 2031. The ES shows in **CD 1.21** Table 8B.1, taken together with Appendix 1 of Mr Hunt's Proof of Evidence, that this will be achieved by a year-by-year transition from currently unmodernised, noisier aircraft, to modernised, less noisy aircraft.
41. The greater seating capacity of the modernised aircraft will, the forecasts tell us, result in relatively few additional flights; and the new-engined variants will deliver reduced noise in operation at Luton compared to their existing unmodernised counterparts.
42. Noise contours produced by the noise contour computer model which has been in operation for many years at Luton Airport, have been produced for the assessment years, and comparison of the areas of the "with" and "without development" cases is said to indicate a less than 1dB increase in noise impact for a temporary period.
43. LADACAN has assessed each of the claims upon which the ES assessment depends. In each case its scrutiny has found flaws in the basis upon which the ES assessment rests. That evidence is set out here and in the Annexes to these Closing Submissions.

Inherent Uncertainty in Fleet Forecasting

44. As the Applicant's and LBC's noise and planning witnesses confirmed, fleet modernisation is a key part of achieving long term noise reduction.

45. In xx Mr Thornely-Taylor agreed that there was inherent uncertainty in forecasting over the timeframe of this application and in particular that *'forecasting nine years ahead is subject to uncertainty. There will be a planning condition and it will be necessary for the airport to seek to forecast as best they can.'* Agreeing the miniscule margin of error over a 9-year timeline, and that hitting the target was critical to avoid the charge of 'salami slicing' or thin end of the wedge, Mr Thornely-Taylor's view was that *'The big thing about the future is that we don't know what's in it. Forecasts may not come to fruition. Things may turn out differently. Of course, that's always the case.'* He confirmed that what should be done is to *'make the best forecast of what is likely to occur and model that, and use that as the basis of the assessment'*¹⁵. These views were consistent with those of Mr Bashforth in xx that the longer the timeline, the greater the uncertainty.

The Applicant's Unrealistic Fleet Mix Assumptions

46. Inherent uncertainty aside, there is also evidence that the Applicant's assumptions about fleet mix do not match up to the figures published by the airlines whose conduct cannot be controlled by the airport. Mr Wingfield called this into question in relation to easyJet and LADACAN has shown, using information in the Inquiry that significant questions also exist in relation to the Wizz fleet composition projected by the Applicant for 2028¹⁶.

47. LADACAN's representation to LBC in July 2021 evidenced its concern that the fleet mix presented in the then Table 8B.1 did not stand up to scrutiny when compared

¹⁵ Nov 4th am recording, 01:10:00 - 01:22:00

¹⁶ INQ-54 'Information Note from LADACAN showing processed flow data', Nov 2022

to the real-world fleet composition¹⁷. In particular, the ratio of modernised to unmodernised A321 aircraft actually flying at Luton in the first half of 2021 was the reverse of the predictions in the then ES. The proportion of A320neo aircraft also appeared to be overstated.

48. The one-page document **INQ-54** submitted by LADACAN to the Inquiry presents data extracted from the ES4 fleet forecast tables in ES Table 8B.1¹⁸ and by a series of arithmetic steps and informed by Mr Hunt's Appendix 1 shows that the ratio of A320neo to A321neo projected by the ES forecasts to be in the Wizz fleet in 2027/28 differs significantly from published Wizz projections for its own fleet.
49. Mr Strachan put to Mr Skelton in xx that Table 8B.1 provided a robust baseline in which the fleet was unconstrained by the problems of less modernised aircraft visiting the Airport.
50. However, the arithmetic of **INQ-54**, derived from ES Table 8B.1 indicates that there is a significant disparity in the Wizz fleet projections for both the 'with development' and 'without development' forecasts in Table 8B.1, so the robustness to which Mr Strachan referred does not in that respect stand up to scrutiny.
51. The Applicant sought to discredit **INQ-54** in xx by claiming that aircraft retirement had not been taken into account. But Mr Lambourne confirmed that the comparison was being made to published Wizz fleet forecasts in the Inquiry¹⁹. The questions put in xx to Mr Lambourne to the effect that slot numbers²⁰ should not have been

¹⁷ **CD 3.02** 'Consultee responses to planning application', PDF 372/414, section 6 "Unrepresentative fleet mix"

¹⁸ **CD 1.21** PDF 3/5 and following

¹⁹ **INQ-27**, PDF 17/20 'Wizz Air fleet renewal FY22 results presentations 8 Jun 2022

²⁰ It was odd indeed that the Applicant saw fit to xx Mr Lambourne on slots and then later, seek to muzzle LADACAN in relation to posing question on this matter, on the basis that slots formed no part of the LADACAN case. The offered a worrying reminder of the unsuccessful attempts to prevent questions about fleet mix being put by LADACAN to anyone other than Mr Hunt, who insisted when asked

multiplied by two to achieve flight numbers in **INQ-54** were misconceived as Mr Bashforth agreed by confirming in xx that the slots referred to in Appendix 1 of Mr Hunt's Proof were only departure slots, and common sense led to the conclusion that an airline cannot only fly aircraft out of an airport but must fly a broadly equal number of planes in to that airport over the course of a 92-day period. Mr Bashforth protested that he (like other witnesses who appeared at this Inquiry) was neither a forecaster nor an expert in airport operations but the point was one of common sense and logic, which he could not refute.

LADACAN's Scrutiny of the Noise Benefits of Modernised Aircraft

52. In xx Mr Holcombe confirmed the uncertainties inherent in future aircraft not meeting expected noise benefits, a problem compounded, he indicated in xx by the absence of any long-term noise reduction strategy and therefore the necessary details for a full assessment, until up to 12 months after any grant of permission (a point apparently not lost on Inspector Underwood either). As LADACAN's data analysis shows²¹, and Mr Thornely-Taylor agreed²², the A320neo modernised aircraft did not deliver the noise benefit in the context of Luton Airport which has been assigned to it in the ES noise modelling²³ and so the Applicant's noise reduction assumptions are unreliable and the contours are under-predicted.

53. Comparison of the relative benefits of other modernised aircraft using the data set out in **INQ-44** and derived from the Applicant's flight noise measurements tells a similar tale.

about this, that he was not a forecaster and not the author of his own Appendix 1. Time and again, the Applicant has sought to close down scrutiny of its own case.

²¹ **INQ-44.1** 'Corrigendum to LADACAN Note regarding noise measurements 26 Oct 2022' PDF 9-10/12

²² Inquiry video 4th Nov 2022 pm, at 08:20 and following

²³ **CD 1.17** PDF 62/92, Table 3, compared to **INQ-44.1** PDF 9/12 5.3 'Numerical values of 2018 averages'; subtracting BAP Ave for A320 departure 83.9 from A20N 81.5 departure gives -2.4dB whereas ES uses -3.8dB. Other disparities can be identified in a similar way.

LADACAN's Scrutiny of the Baseline Scenario

54. The ES is required to evidence noise impacts of the “Do Something” case relative to the “Do Nothing” case representing the current position. LADACAN’s inspection of the ES documents in the light of confused or contradictory evidence reveals inconsistencies which strike at the heart of the EIA.
55. As LADACAN has indicated²⁴, the baseline “Do Nothing” scenario has been unclear throughout the Application, and was fundamentally changed between ES3 and ES4 without this being listed as one of the reasons, along with “the passage of time”, justifying the revisions to the ES assessment²⁵.
56. Neither the description of the ES3 baseline scenario nor that of ES4 offers a baseline case truly representing ‘current operational position’ since current operations are depressed following COVID. A ‘Without Development’ baseline was taken to be the Condition 10 contour condition limits informed by the 2019 18mppa year of operation²⁶.
57. Whilst ES4 contains forecast flow tables for a “with Condition 10” scenario, the scaled back “2019 18mppa with scheme” scenario is described as difficult for airlines to operate²⁷. Appendix 1 of Mr Hunt’s Proof, received after the ES consultation, indicates that flights would have to be removed from the 92-day summer schedule to achieve Condition 10-compliant operation. However, the Applicant currently has no mechanism to rescind slots once issued²⁸. Therefore a

²⁴ **CD 3.02** ‘Consultee responses to planning application’, PDF 368/414, section 1 “Lack of clarity over baselines” and Mr Lambourne Rebuttal Proof of Evidence, PDF 10/13, paragraphs 21-26

²⁵ **CD 1.19** ‘Note on ES documentation’, PDF 1/2 para 1.1.2 item (5) and PDF 5/6 par 2.3.1

²⁶ **CD 1.18** ES non-technical summary, PDF 11/22, internal page 8, paragraph 3.2.8

²⁷ **CD 1.16** ‘Addendum to CD1.09 Environmental Statement’, Jul 2022, PDF 50/98, internal p44, para 6.3.2

²⁸ **CD8.36** ‘Ltr LLAOL to LBC re Breach’ Dec 2019, PDF 3/3

“current position meeting Condition 10 limits” does not appear to exist in operational terms.

LADACAN's Scrutiny of the Noise Contour Model

58. Assessing the noise impacts of this Application depends on the reliable production of noise contours which are derived from a computer model which, as confirmed by Mr Holcombe in xx, can either forecast contours given forecast fleet and movements data, or calculate actual contours given actual fleet and movements data. The accuracy of the model in either case depends on the real-world data gathered by noise monitors and track keeping systems and used to adjust and validate the model.
59. Mr Thornely-Taylor, in his proof of evidence, describes the ‘shelving beach’ phenomenon whereby contour areas are sensitive to small changes²⁹. BAP has quantified the contour difference arising in the local context from a change in the noise benefit ascribed to a neo aircraft type³⁰.
60. The proposed Condition 10 relies for avoidance of “salami slicing” on achieving a contour reduction in 2031 of 0.1sq km compared to the current long-term 2028 limit and so that the requirement of APF paragraph 3.3 for noise reduction is achieved³¹. On any view the achievement of so narrow a margin, 9 years hence, is exceedingly challenging and none of the Applicant’s witnesses disagreed with this obvious fact. It is like hitting a bullseye at a range of 500 yards and perhaps this is the reason that so central a tenet of the Applicant’s modelling assumptions is not expressed in any of its proofs of evidence but rather has to be deduced from the figures cited in Mr

²⁹ Mr Thornely-Taylor Main Proof of Evidence, PDF 41.72, para 8.1.3

³⁰ **CD 8.21** ‘LBC Response to Andrew Lambourne’, May 2020, PDF 6/9

³¹ **CD 10.04** ‘Policy Framework (APF), HM Government 2013, PDF 55/86 “As noise levels fall with technology improvements the aviation industry should be expected to share the benefits from these improvements.”

Thornely-Taylor, who couldn't disagree with the arithmetic but also couldn't offer a proper explanation for the absence of the figure in his written evidence.

61. The reality is that the level of contour precision upon which the Applicant so heavily depends necessarily calls for an equivalent need for precision in its noise monitoring and contour modelling, which however, are absent.
62. Mr Lambourne and Mr Roberts reviewed the 2015 profile adjustment to the noise model³² to assist the Panel in deciding whether the process delivers the precision necessary to rely on a 0.1sq km contour reduction in 9 years' time. Mr Roberts withstood sustained xx on this issue and was able to show that the noise contour model has, since 2015, underpredicted noise impacts (see Annex A for detail relating to the 2015 Profile Adjustment).
63. The information presented in **INQ-44** (aka the 12-pager) sections 5.3 and 5.4 confirms the opinion of BAP and Luton Rising that noise monitor 3 is affected by noise from the M1. The balance of opinion was that the readings from this monitor, if incorporated into the noise contour validation would cause the model to overpredict (see Annex B for detail relating to Unreliable Data from Noise Monitor 3).
64. Taken together with the evidence given above that the noise benefits of modernised aircraft have been overstated, which would also cause the model to underpredict³³, we are left with a situation in which from three perspectives (i.e. the profile adjustment, unreliable data from noise monitor 3 and overstatement of benefits from neo aircraft) there is fundamental unreliability in the contour model itself and therefore in the Applicant's ES assessment of noise impact.

³² **CD 8.06** 'BAP contouring methodology update', Bickerdike Allen, Aug 2015

³³ cf paragraph 6 of Annex A of these closing submissions; see also working in footnote 23 on page 17 above.

(C) More Robust Conditions and Strict Controls should the Application be granted

65. For the reasons set out above, LADACAN submits that the data and modelling underpinning the Applicant's noise assessment methodology is flawed and that the Application should therefore be refused.
66. However, should the Application be granted, LADACAN submits that the history of noise impacts at Luton Airport militates in favour of more robust conditions and stricter controls.

Relevant Background

67. As Mr Lambourne's Main Proof of Evidence sets out in full (and summarised above), the consequences of accelerated throughput growth – equating to 15 years' growth in 5 years, well ahead of the required mitigation – led prematurely to more flights by unmodernised aircraft, excess noise by night and eventually by day too, and a noise planning breach within 4 years of the 2014 permission.
68. Furthermore, when requested by the LBC to put in place an Action Plan to rectify the situation, the plan produced by the Applicant failed and the breaches worsened. When requested by LBC to bring forward delivery of its long-term noise contour reduction strategy to January 2020, the strategy apparently remains outstanding almost three years later.
69. The secondary consequences of accelerated and inadequately mitigated growth included excess emissions from an as-yet unmodernised fleet, excess emissions from passenger vehicles travelling to and from the Airport ahead of more sustainable transport, an accelerated loading of the surface transport network, and

an early commercial windfall to the Council's airport-owning company by way of increased concession fees due to increased passengers.

70. For all these reasons people in the communities represented by LADACAN have lost trust in the Airport Operator and faith in the planning system. The planning history evidence shows that they are justified in suspecting that future breaches with no enforcement are likely should the Application be granted with conditions capable of being misinterpreted or ignored again in this way. They do not share Mssrs Thornely-Taylor's and Bashforth's optimism that the history of breach points to a future of reliable compliance because they, in common with LADACAN, place more weight on actions and experience than on words.

71. LADACAN has sought to perform an effective role for the Inquiry in scrutinising the noise submissions in this Application. It has done so based on painstaking, diligent and extensive document research including Freedom of Information requests; local knowledge and technical understanding gained over years of involvement in the Applicant's Noise and Track Sub Committee and other groups, validation checks on the Applicant's forecasts and noise measurement data, comparisons to noise information provided in the ES, a review of the reports by Applicant's professional noise advisor and engagement with the Applicant's other noise-related planning consultations³⁴.

72. LADACAN's background research covered three main areas, and its conclusions can be summarised as follows:

(1) The 2014 s106 Agreement:

³⁴ The 2012 Application; the Condition 11i change; the RNAV airspace change consultation; the Condition 10 change 2019; and this Application

73. Again as Mr Lambourne's Main Proof of Evidence set out, the basis on which the permission was granted and mitigation was to be achieved is set out in the Section 106 Agreement to which the Applicant and LBC are signatories. This agreement prohibits the Applicant from development otherwise than according to its terms unless it is in possession of a planning agreement to do so.
74. The s106 Agreement sets out a comprehensive suite of noise control conditions and reporting obligations which, in the hands of a competent and experienced airport operator scrutinised by a watchful local planning authority, appear to omit nothing except stage-by-stage control of the growth trajectory. Yet breaches occurred and worsened for three years running and were not prevented by the airport or by enforcement but rather by COVID. To suggest, as Mr Bashforth did in xx, that this is evidence of a control regime working well frankly beggars belief.
75. This is why LADACAN proposed at the Conditions Round Table that if the Panel is minded to recommend the grant of the Application, specific pre-commencement conditions tying each stage of growth to the Applicant's forecasts for aircraft movements, fleet modernisation and noise reduction would be justified in light of the planning history.

(2) Accelerated Growth

76. Information about accelerated growth is documented in Mr Lambourne's Main Proof of Evidence, and touched on above. A Growth Incentive Scheme ("GIS") operated between 2014 and 2020 to financially reward airlines which achieved year-on-year growth and super-growth at Luton Airport. The GIS describes rebates on concession fees which would otherwise have found their way into the public purse, being made available to qualifying airlines in the form of reduced charges.

77. GIS rebates and associated passenger thresholds were, according to documents placed before the Inquiry, agreed between the parties in annual meetings. Reports on the Airport's performance against passenger targets higher than those forecast in 2012 were regularly reviewed by Council Committees. The accelerated growth was acknowledged as targeted rate of throughput was significantly higher than the upper end forecasts presented to the 2013 Planning Meeting.
78. A report to LBC's Overview and Scrutiny Board in 2017 by a Luton Rising Officer who is currently the Council's Monitoring Officer and referenced previously stated that: *'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'*³⁵, this being the public airport-owning company Luton Rising wholly owned by LBC. LADACAN regards this incentivisation as 'management by proxy' which does not accord with the provisions of Section 17[2] of the Airports Act 1986.
79. Council Members and Officers may, as LADACAN understands it, sit simultaneously on one or more of the Executive Committee, the Oversight and Scrutiny Board, LBC's Development Control Committee, and on the Board of Luton Rising. Given the potential for an unresolved conflict of interest in such situations, LADACAN drew the Panel's attention to the 2019 CSPL report on Standards in Public Life³⁶.
80. LADACAN is also concerned that because members of the Council sit on various boards and committees including the Executive, the Oversight and Scrutiny Board, the Development Control Committee and the Board of Luton Rising, and because the Airport is ultimately owned by the Council as a business venture, it is appropriate for best practice advice on governance as set out by the CSPL to be

³⁵ **CD 17.10** 'Corporate Performance Data Pack' for LBC Overview and Scrutiny Board, Jan-Mar 2017, PDF 8/46

³⁶ **IP-12.1** CSPL Local Government Report, chapter 7

reviewed and where necessary acted on. Likewise since Luton Rising has invested in large Airport-related infrastructure projects such as the DART, LADACAN has highlighted the concerns raised by Kemi Badenoch regarding the need for the Council to reduce its financial exposure to the Airport.

81. A further consequence of accelerated growth was that the 18mppa passenger cap limit was reached in 2019. Appendix 1 of Mr Hunt's Proof of evidence describes the significant difficulties this now causes to achieving fleet modernisation due to inadequate headroom in the passenger cap and noise contours to enable transition to larger modernised aircraft. Lax management of the Airport or wilful accelerated growth has led a situation in which the Airport Operator has by its own account painted itself into a corner from which it cannot proceed with the fleet modernisation to which it committed without apparently damaging its business. A stricter control regime as proposed by LADACAN for the future should the Panel be minded to grant permission would therefore also assist the Applicant.

82. The Noise Insulation Scheme did not apparently alter during the period of breaches despite the total £15m incentives to the airlines and accelerated concession fees to the Council. LADACAN's case is that noise insulation at best only provides partial and not effective mitigation, is of limited benefit to people who wish to sleep with their windows open, and is of no benefit to people on a balcony or outside in their gardens³⁷. Furthermore, best practice guidance recommends that a noise reduction target should be set for such insulation.³⁸

(D) Defective EIA

Inconsistent baseline "Without Development" scenario

³⁷ LADACAN Statement of Case, paragraphs 23-26

³⁸ CD8.17 ICCAN Noise Insulation Review Mar 2021, PDF 8/14

83. In response to a LADACAN assertion that 'The Environmental Statement (ES) is defective because the 'baseline' is incorrect', Mr Thornely-Taylor's Proof cites Appendix 1 of Mr Hunt's Proof as *'The basis of the assumptions used for the forecasts relating to both the with and without development scenario'*³⁹
84. When taken in xx to the charts of forecast flow rates in Mr Lambourne's rebuttal⁴⁰ on internal pages 6 and 7 Mr Thornely-Taylor confirmed he had seen them. When asked whether they show what will have to happen in With Scheme Day and With Scheme Night to achieve the overall 0.1 sq km contour reduction, he said *'if these charts do correspond with the forecasts in Mr Hunt's evidence, then yes'*, noting he had not checked that they do. Mr Thornely-Taylor clearly regards the baseline 'Without Development' scenario as being provided by Mr Hunt's Appendix 1.
85. A more mixed picture was given by Mr Strachan when asking xx questions to Mr Skelton⁴¹. In taking Mr Skelton to Mr Hunt's Appendix 1 and the ES Table 8B.1 Flow forecast table, Mr Strachan referred to Table 8B.1 as modelled assuming modernisation occurs in the baseline as per the 19mppa case, at the same rate and to the same degree of effectiveness as if permission had been granted. He put it as a more robust worst-case approach to the environmental assessment in the Table and the model. He then went on to say *'by not altering the ES to reflect the fact that there's the potential for the position to be worse in the baseline, that is a robust approach to Environmental Assessment'*. *'If we had ... updated the modelling to reflect what Mr Hunt is saying actually airline operators are more likely to leave their noisier aircraft with us, limited in their expansion, that's going to make the noise situation in the baseline worse, not better?'*.

³⁹ Mr Thornely-Taylor Main Proof of Evidence, PDF 52/72, internal page 52, paragraph 11.2.2

⁴⁰ LADACAN-W4.3 Rebuttal Proof, PDF 7-12/13, internal pages 5-10, section 4, paragraphs 18-26

⁴¹ Inquiry recording Nov 9th 2022 am starting 2:31:00 to 2:36:00 approx.

86. In other words, to escape the analysis provided by LADACAN, and its rebuttal of the Forecast flow data, the Applicant is now claiming – despite what is said in the ES – that the likely baseline scenario is Appendix 1 but the modelled baseline scenario is Table 8B.1 for the purposes of performing robust noise analysis.
87. The observation that those Charts of the Forecast flow data in ESA4 Table 8B.1 do not evidence the operational difficulties and lower modernisation rate indicated in Mr Hunt’s Appendix 1 is core to LADACAN’s point that there is an inconsistency between the ‘With Scheme and Condition 10’ scenario as described in the ES⁴², and the ‘With Scheme and Condition 10’ scenario described in Mr Hunt’s Appendix 1. The two are incompatible as explained in Mr Lambourne’s Rebuttal, Section 4.
88. The Panel is invited to consider whether, given that the EIA did not contain Mr Hunt’s Appendix 1 when issued or consulted on, and still does not, it fails to comply with paragraph 3 of the Town and Country Planning (EIA) Regulations 2017 Sch 4 paragraph 3 which requires such a document to contain:
- ‘3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the development as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.’*
89. Appendix 1 of Mr Hunt’s Main Proof of Evidence clearly describes relevant aspects of the baseline scenario (a constrained operation due to the limited headroom in which to achieve modernisation without breaching conditions) and does outline the likely evolution thereof without implementation of the development (operations having to be curtailed, rotations changes, an unmodernised fleet at Luton).

⁴² CD 1.16 PDF 50/98, internal page 44, paragraph 6.3.2; CD 1.21 Forecast flows Table 8B.1 PDF 3/5 to PDF 5/5

Therefore the information in Mr Hunt's Appendix 1 is germane to the EIA – particularly since Mr Thornley-Taylor appears to regard it as the baseline, whereas the ES describes the Flow data as the baseline.

90. This problem is compounded by the confusion arising from different baselines appearing in earlier versions of the ES. Whilst Mr Thornley-Taylor may dismiss these references as redundant and offering nothing of use to his notional man or woman from Mars, they at least add to the confusion and paper-chase⁴³ which cannot properly form the subject of a robust EIA, and, it is submitted reflect an earlier attempt to engage in the necessary exercise of comparing impacts to the 2014 baseline in order properly to understand the effect of the proposal and avoid 'salami-slicing'⁴⁴.

*v. **Socio-economic impacts** - The socio-economic implications of the proposed development.*

91. Dr Chapman's written and oral evidence showed that the Applicant and LBC alike have relied unduly on generalised socio-economic benefits of the Airport per se rather than the impacts of the s73 Application itself.
92. Mr Hunt had no adequate answer to the question put to him as to why, when socio-economic impacts had been screened out of the EIA on the basis that they gave rise to no likely significant environmental effects, they could nonetheless credibly be relied upon, whether by the Council or the Applicant, in support of their arguments that the proposal would bring significant socio-economic benefits. After all,

⁴³ "It may consist of one or more documents, but it must constitute a "single and accessible compilation of the relevant environmental information and the summary in non-technical language" (*Berkeley v SSETR* [2000] 3 All ER 897, 908)

⁴⁴ *Lambeth LBC v SSHCLG & Ors* [2019] UKSC 33, to which the Applicant referred in Opening was not an EIA case and does not assist in terms of interpreting the EIA Regulations and the approach they require in s73 cases such as this.

according to the PPG on EIA⁴⁵, its very purpose “...is to protect the environment by ensuring that a local planning authority when deciding whether to grant planning permission for a project, which is likely to have significant effects on the environment, does so in the full knowledge of the likely significant effects, and takes this into account in the decision making process...and... also to ensure that the public are given early and effective opportunities to participate in the decision making procedures.” Given this clear purpose it would be an odd result indeed of socio-economic impacts in this case could be scoped out of the EIA only later to feature in support of the Applicant’s case at this Inquiry.

93. A more credible analysis is that given by Dr Chapman and the Applicant’s own consultants, Oxford Economics (see their 2021 assessment at **CD16.02**), i.e. that the Applicant’s socio-economic case is flawed and overstated. It is flawed because its ambit is too narrow, it failed to consider both pros and cons (including noise, tourism and emissions impacts), it identifies nothing more, by way of pros, than jobs (including the GVA consequences of the same) as helpfully clarified by questions put to Mr Hunt by Inspector Clegg, and it relies on outdated analysis, deployed at the time of the 2012 Application.

94. It was striking and odd, to say the least, that at a time when the Applicant had offered no evidence of socio-economic benefits, Mr Gurtler had sought, within his Officer’s Report (**CD 5.08**), to include such material, but as he accepted in xx, most of this was generalised in nature rather than specific to the s73 Application before this Inquiry. No amount of Re-examination as to specific consideration of benefits could alter that position. And there is evidence before this Inquiry (see e.g. Letter from Kemi Badenoch at **CD17.17**) of concern that Luton Council is overdependent on the airport for economic support.

⁴⁵ PPG EIA - Paragraph: 002 Reference ID: 4-002-20140306, Revision date: 06 03 2014

95. In the circumstances Dr Chapman's conclusions hold and are recommended to the Panel: The Applicant has presented no credible economic case supporting its application. A proper assessment (whether TAG compliant or not - and given that public funds appear to be at stake⁴⁶ - directly or indirectly, LADACAN considers that a version of the TAG approach should have been followed if socio-economic benefits are to be relied upon in this Application) would in any event reveal that it is highly unlikely that this scheme has a favourable socioeconomic balance and indeed that the net impact may be negative for the regional and national economy as well as bringing significant disbenefits in terms of noise and emissions and the inevitable costs of addressing these if they indeed can properly be addressed.

96. In sum, the Applicant's socio-economic assessment came too late for good reason and was then flawed and overstated. LADACAN invites the Panel to attach little if any weight to any limited benefits found to arise, for these reasons.

vi. Plan Conformity - Whether the proposed development would be consistent with the Development Plan and other relevant policies.

97. The s73 Application had been advertised by LBC as not conforming to the Local Plan (rather than "potentially" not conforming, as Mr Bashforth said in his written evidence but retracted in xx). However 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 evidence, particularly that relating to noise, has shown that this is an unsound interpretation.

⁴⁶ By virtue of the diversion of concession fees which would have reached LBC's public airport-owning company LLAL by way of rebates via the Applicant to growth and super-growth airlines under the Growth Incentive Scheme **CD 8.37**

98. There was general agreement between the parties as to the meaning of national policy, no party suggesting that any of this offered a *carte blanche* for development of the type proposed here. Consequently, it was not necessary in the course of the Inquiry, and is not necessary in these closing submissions, to devote much time to that aspect of the case.
99. Instead the focus was (and is here) on the interpretation of relevant local plan policy, particularly LLP6, which provides, so far as relevant, as follows:

Airport Expansion

- B. Proposals for expansion of the airport and its operation, together with any associated surface access improvements, will be assessed against the Local Plan policies as a whole taking account of the wider sub-regional impact of the airport. Proposals for development will only be supported where the following criteria are met, where applicable/ appropriate having regard to the nature and scale of such proposals:
- i. they are directly related to airport use or development;
 - ii. they contribute to achieving national aviation policies;
 - iii. are in accordance with an up-to-date Airport Master Plan published by the operators of London Luton Airport and adopted by the Borough Council;
 - iv. they fully assess the impacts of any increase in Air Transport Movements on surrounding occupiers and/or local environment (in terms of noise, disturbance, air quality and climate change impacts), and identify appropriate forms of mitigation in the event significant adverse effects are identified;
 - v. achieve further noise reduction or no material increase in day or night time noise or otherwise cause excessive noise including ground noise at any time of the day or night and in accordance with the airport's most recent Airport Noise Action Plan;
 - vi. include an effective noise control, monitoring and management scheme that ensures that current and future operations at the airport are fully in accordance with the policies of this Plan and any planning permission which has been granted;
 - vii. include proposals that will, over time, result in a significant diminution and betterment of the effects of aircraft operations on the amenity of local residents, occupiers and users of sensitive premises in the area, through measures to be taken to secure fleet modernisation or otherwise;

- viii. incorporate sustainable transportation and surface access measures that, in particular, minimise use of the private car, maximise the use of sustainable transport modes and seek to meet modal shift targets, all in accordance with the London Luton Airport Surface Access Strategy;
- ix. incorporate suitable road access for vehicles including any necessary improvements required as a result of the development

100. LADACAN submits that the interpretation of LLP6 is clear. The use of the word “only” within the preamble makes plain that in order to attract support, all criteria which are applicable must be met. The position advanced in questions by Mr Steel and in evidence by Mr Gurtler, that this word adds nothing of substance to the meaning of the policy is not accepted by LADACAN and was not accepted by Mr Bashforth on behalf of the Applicant either. Instead he appears to return to the theme that the Application was not of a scale or significance which merited strict adherence to the policies terms or the meeting of the various applicable criteria. He accepted that the criteria did apply to the Application but seemed to infer from the word “appropriate” some form of justification for watering down of those criteria.

101. The plain and natural meaning of this part of Policy LLP6 is that applicable and appropriate come to mean the same thing, i.e. whether in principle the criteria could apply to the subject proposal. All of them do, as Mr Bashforth agreed. LADACAN agrees that the meaning of criterion v. would benefit from the addition of the word “not” between “or” and “otherwise”.

102. The question for the Panel and ultimately for the Secretaries of State, then, is whether, on the state of the evidence, those criteria have been met. LADACAN submits that none of criteria iv – vii is met in this case, given the deficiencies identified in the Applicant noise assessment. As a result of those deficiencies, it cannot be said that the proposal:

- (i) *fully* assesses its noise impacts (because that assessment is flawed and therefore not full), contrary to criterion iv;
- (ii) achieves further noise reduction or no material increase in day or night time noise or otherwise causes excessive noise including ground noise at any time of the day or night and the flaws in the noise contour model mean that noise increase may indeed be material, contrary to criterion v.;
- (iii) includes an effective noise control, monitoring and management scheme that ensures that current and future operations at the airport are fully in accordance with the policies of LLP6 and any planning permission which has been granted (because the existing scheme has not as a matter of fact ensured that operations are fully in accordance with any planning permission and there is nothing concrete proposed which will change this), contrary to criterion vi;
- (iv) will over time, result in a significant diminution and betterment of the effects of aircraft operations on the amenity of local residents, occupiers and users of sensitive premises in the area, through measures to be taken to secure fleet modernisation or otherwise (because not all local residents benefit from noise insulation and the evidence on noise reductions due to fleet modernisation is uncertain and likely to have been overstated by the Applicant), contrary to criterion vii.;

103. Accordingly, the terms of LLP6 are not met and the proposal is inconsistent with relevant local plan policy, so that the presumption in favour of development becomes (according to NPPF para 12) a presumption against a grant of permission (as agreed by Mr Gurtler in xx).

vii. - Other considerations - The effect of other considerations on the overall planning balance

104. LADACAN continues to share concerns expressed by the Hertfordshire Authorities⁴⁷, 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 worsened 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.
105. LADACAN shares concerns expressed also 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 Council which benefits financially, both directly and indirectly in proportion to its passenger throughput, is at least a theoretical conflict of interest.
106. 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.
107. Mr Skelton offers suggestions to how such concerns could be addressed through appropriate conditions, should the Inspectors be minded to grant the Application and these suggestions and others have been explored in the course of the conditions session at this Inquiry and have been addressed within the noise section of these closing submissions.

⁴⁷ **CD 3.05** 'PINS Submissions Redacted' ZIP file in which is found "Hertfordshire Authorities.PDF"

Conclusion

108. For the reasons outlined here and 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.
109. Alternatively, any grant of the s73 Application should impose robust conditions, informed by an updated and proper noise assessment, to ensure reliable noise control and enforcement of any further planning breaches.

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Annex A: South Luton departure profile check in 2015

1. LADACAN received the noise measurement data corresponding to the departure profile adjustment check conducted using mobile noise monitor NMT04 in Ludlow Avenue, South Luton over Christmas / New Year in 2014/15 and reported on by BAP⁴⁸. Although requested, LADACAN did not receive a calibration report for that monitor during that period.
2. Mr Lambourne reviewed the profile check in his Main Proof of Evidence and concluded that it was unsafe because of the low sample sizes and unrepresentative monitoring period when meteorological conditions were causing weekly averages of A320 departure noise using a data file different to the 2018 and 2019 annual files containing aircraft type errors⁴⁹.
3. Mr Roberts' Rebuttal compared the 2015 monitoring results with others performed by the Applicant at the same monitoring location over similarly short periods and remarked on the variation between the results, noting that profile check average was the second lowest result overall. Given that it had confirmed an apparent 4dB reduction in noise due to the profile adjustment, but that the variability in short-duration monitoring results was around 2dB, Mr Roberts concluded that the exercise was unsafe and should have been conducted over a longer period to obtain a valid check value.⁵⁰
4. BAP's description of the aircraft types affected by this change, and the airlines which had provided information, was on closer inspection and when led to it by LADACAN, agreed by Mr Thornely-Taylor to be deficient in that only two aircraft

⁴⁸ **CD 8.06**, 'BAP contouring methodology update', Bickerdike Allen, Aug 2015

⁴⁹ Mr Lambourne Main Proof of Evidence PDF 42/59, internal page 40, paragraphs 138-139

⁵⁰ Mr Roberts Rebuttal Proof of Evidence PDF 12/42, internal page 12, paragraphs 5.15 – 5.23 and chart on PDF 42/42, final internal page

types could have been checked, rather than four, based on information from only one airline rather than more than one.

5. In xx of Mr Roberts, Mr Strachan asserted that the need for the check had been picked up by annual validation at the fixed noise monitors. This does not tally with BAP's account, which reports that the adjustment did not alter the readings and the fixed monitors. During and at the end of a long exchange in xx, Mr Roberts again stated the reasons for his misgivings.
6. The effect of the profile change reduced the 48dB LAeq night noise contour area value by 6% and the 54dB LAeq night noise contour area by 15%⁵¹. This has affected the noise model from that point on since BAP refers to no other profile updates. An over-correction would cause the model to under-predict noise close in to the runway, and to produce smaller contour areas.
7. Mr Strachan put to Mr Roberts in xx that even if there was an under-prediction, it would affect the base case and with development case and bring them both up, but the difference would remain the same. But basic arithmetic shows that if two different numbers are both increased by say 6%, the difference between them also increases.
8. LADACAN therefore invites the Panel to contrast the "thousands of results" normally used for noise model validation with the few hundred used in this case, coupled with the clear variability due to meteorological effects evidence by Mr Lambourne's Proof and by the **INQ-44** examples of three-week averages for A320 departures at monitor 2 taken at the same time and three weeks either side, coupled with the contrasting examples in Mr Roberts' Rebuttal. It is clear from these that the data used for the check is neither representative nor sufficient.

⁵¹ **CD 8.06** 'BAP contouring methodology update' Aug 2015, PDF 4/5, section 7 and Table 3

Annex B: Reliability of noise monitor NMT03

1. Noise monitors are the devices which capture noise readings from the real world and feed them to the Noise and Track system, as explained in Mr Lambourne's Main Proof of Evidence⁵². Noise monitors NMT01, NMT02 and NMT03 are permanently mounted in fixed locations and are used to validate the noise contour model. Noise data is correlated with information about passing flights and the correlated information stored as timed flight noise measurements in the NTK system. Spreadsheets containing this data can be exported in the form shown in the example of flight noise measurements provided to LADACAN⁵³.
2. Mr Lambourne's Main Proof of Evidence explains LADACAN's reservations – shared by the Airport's Noise and Track Sub Committee – that NMT03 is not in a suitable location for reliable monitoring.
3. The tables and charts of averages produced by LADACAN from the flight noise measurements for 2018 and 2019 show that the average angle of elevation of aircraft passing the NMT03 location is substantially lower than at the other monitoring locations. Aircraft passing NMT01 are on average at around 85°; those passing NMT02 are at around 60°; and those passing NMT03 at around 40-45° average elevation. The average distance from aircraft-to-monitor increases from NMT01 to NM02 to NMT03⁵⁴.
4. Mr Thornley-Taylor recognised the difference between the readings from Noise Monitors NMT02 and NMT03 for the same aircraft, and speculated on various

⁵² Mr Lambourne Main Proof of Evidence PDF 38/59, internal page 36, paragraphs 130-134 re NTK system

⁵³ **INQ-44.1** Corrigendum to LADACAN Note regarding noise measurements 26 Oct 2022, PDF 3/12

⁵⁴ **INQ-44.1** Corrigendum to LADACAN Note regarding noise measurements 26 Oct 2022, PDF 4/12 – PDF 7/12

possible causes: intervals between radar pings and the movement of the aircraft; a higher trigger setting for the monitor next to the motorway; possible vortex effects from the wings as the aircraft were banking. He rejected the conclusion of Luton Rising's experts⁵⁵ that NMT03 is not in a suitable location for noise assessment.

5. In extensive xx by Mr Strachan, Mr Roberts noted the BAP report stating that NMT03 is affected by noise because it was close to the M1, and highlighted a noise data sample showing the same flight with two equal noise readings at greater distance from NMT03 than NMT02, a point picked up by Inspector Clegg. Mr Roberts did not fault the NMT03 monitor but rather drew attention to its location and the relative difference in distance of an aircraft between NMT02 and NMT03. He made the point that an increased distance would normally result in more attenuation. His explanation was challenged by Mr Strachan who in xx referred to banking and vortices as relevant factors but no documents in the Inquiry were referenced to support this assertion. Mr Strachan also mentioned meteorological conditions as being relevant.⁵⁶
6. Mr Roberts also drew attention to the potential for lateral attenuation due to low elevation angle a NMT03 by reference to a CAA study. Mr Thornely-Taylor had rejected this on grounds that the average itself was not less than the 38.5° at which such attenuation occurs, and Mr Strachan in xx made the same point.
7. Mr Strachan argued that even if monitor NMT03 were reading high, it would prove the noise model was over-predicting in this respect. Mr Roberts repeatedly asserted that the main point is that this provides another example of uncertainty in the modelling.⁵⁷

⁵⁵ **CD 8.32** Luton Rising 32m Appendix 16.1 Noise Feb 2022, PDF 91.124, paragraph 6.10.2

⁵⁶ Nov 2nd pm recording, between 02:21:00 and 02:44:00 approx

⁵⁷ Nov 2nd pm recording, between 02:44:00 and 02:50:00 approx

8. When the angle of elevation issue was first put to Mr Holcombe in xx he initially agreed with what Mr Thornely-Taylor had said, but when presented with evidence of altitude spread agreed that there would also be a corresponding elevation spread.
9. Mr Holcombe struggled to explain why NMT03 produces consistently higher SEL readings than NMT02, relying on a vague reference to air currents possibly borrowed from Mr Thornley-Taylor. He did preface his remarks by noting that wind would be a factor but – perhaps by not being sure which monitor was to the west – had to be prompted to agree that the prevailing wind would cause higher readings at NMT03 on westerly departures. Mr Strachan had also referred to wind but not posited any particular conclusion.
10. CAA guidance on noise modelling requirements in the Inquiry which indicates that monitoring of aviation noise should be done at noise monitoring positions using a minimum elevation angle of 60 degrees⁵⁸.
11. The key points LADACAN draws from these two exchanges are these. In both cases, the factual evidence derived from data supports LADACAN's position. And in both cases, were LADACAN's position to be accepted, the effects on the contour model would move in different directions. The precise extent of those effects is not known, but in the case of the profile update itself the change caused a 6% or 1sq km reduction in the night noise contour size. Therefore any error could be very significant in comparison to the 0.1sq km long-term precision required. Precision is essential in a noise contour model being used to monitor the hitting of a small target nine years away and is lacking in the Applicant's noise assessment.

⁵⁸ CAP 2091 CD 13.50 PDF 8/27 internal page 8, para 2.8, and also footnote 6 which runs on to the next page