

SECTION 77 OF TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (INQUIRIES PROCEDURE) (ENGLAND)
RULES 2000

APPLICATION BY LONDON LUTON AIRPORT OPERATIONS LIMITED
VARIATION OF CONDITIONS 8 (PASSENGER THROUGHPUT CAP), 10 (NOISE
CONTOURS), 22 (CAR PARKING MANAGEMENT), 24 (TRAVEL PLAN) AND 28
(APPROVED PLANS AND DOCUMENTS) TO PLANNING PERMISSION
15/00950/VARCON (DATED 13 OCTOBER 2017)

LPA REFERENCE NUMBER: 21/00031/VARCON

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CLOSING SUBMISSIONS ON BEHALF OF
LONDON LUTON AIRPORT OPERATIONS LIMITED

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* This version of the closing submissions was delivered orally on 18 November 2022. It has since been proof read and typographical errors have been corrected. Text which was delivered orally but which did not appear in the original printed version has been added in red typeface.

Introduction and Summary

1. These Closing Submissions on behalf of the Applicant incorporate the Opening Submissions without repeating them all here.
2. In our opening remarks we anticipated that we would have no hesitation at the end of this process in inviting you to recommend the grant of planning permission for what is proposed, and that has proved to be entirely correct.
3. This inquiry process has only served to confirm the overwhelming case for permitting the variations sought to enable Luton Airport (“the Airport”) to carry out this modest expansion and temporary variations of its noise contour, in full accordance with both national and local development plan policy. It is able to deliver an expansion of its capacity by 1mppa by making better use of existing facilities, with no further operational development of any kind required, in exactly the way that national policy supports in terms of sustainable aviation growth to address the fundamentally constrained capacity that continues to be a basic problem for the nation. It is able to achieve that expansion without causing any significant environmental effects of any kind. That includes, of course, the absence of any perceptible noise impacts on anyone, as is now agreed by **all** the noise experts who have given evidence to the inquiry. To the contrary, it will secure a very significant enhancement in the noise insulation scheme offered by the Airport which has the potential to deliver material noise improvements to a significantly larger number of people and properties affected by existing noise than would otherwise be the case. In so doing, it will deliver a large number of new jobs, both direct and indirect, to the Airport and the area. It will do so at a crucial time for a deprived area that has suffered immensely from the effects of the Covid-19 pandemic. It therefore epitomises the best principles of ‘building back better’ and levelling-up that rightly lie at the heart of the Government’s aspirations for recovery after such a challenging time for all. It is difficult to think of a more meritorious outcome. It is a paragon of exactly the sort of sustainable development that Government seeks to encourage, making better use of existing infrastructure, stimulating and encouraging the economy by offering more jobs and greater travel choice, yet achieving all these things without causing any harm to residents in the surrounding areas or the

environment generally, but securing appropriate enhancements for the benefit of all and the opportunity to travel from a highly sustainable Airport which has already demonstrated its ability to encourage people to access flights by sustainable modes with the exciting new opportunity presented by DART into which so much money has been invested.

4. The case for granting permission is not just compelling, but a basic test of the proper and effective application of both national and local policy intended to support and foster development of exactly this kind. Indeed refusal of a proposal that embodies the central tenets of policy aspiration for making best use of existing airports, delivering sustainable growth, would send a terrible and deeply depressing message to all concerned as to the future of the aviation industry, and to Luton as well. National policy is unambiguous as to the role that the aviation industry plays in the economy, and the Airport is working hard to do its bit to revive the fortunes of an economy and industry that has suffered so much from the vicissitudes of the Covid-19 pandemic and the international challenges that we are currently facing. That is particularly so for the deprived area for Luton, where the Airport lies at the heart of the local planning authority's development plan strategy for success. Luton, the wider region and the nation as a whole must support proposals of this kind that offer an important beacon of hope and contributor in its own important way to a return to sustainable growth of the nation's fortunes. It is therefore no wonder that the local planning authority has acted in accordance with the advice of the independent advisers it instructed to scrutinise this proposal in supporting this scheme. We strongly urge you to recommend the grant, and the Secretaries of State urgently to grant this application, so reflecting the will of the local planning authority and the national and local plan policy which so strongly supports what is proposed.
5. In so doing, it is important to recognise the nature of this application and the context as to why it is a modest expansion with only a temporary variation of the contours that currently apply.

6. The Airport currently operates under planning permission 15/00950/VARCON (dated 13 October 2017) ('the Variation Permission')¹. The Variation Permission allows the Airport to operate up to 18 million commercial passengers per annum ('MPPA') within the noise contours set out in condition 10 of that permission.
7. This application made under section 73 of the Town and Country Planning Act 1990 ('the 1990 Act') only seeks the variation of certain conditions attached to the Variation Permission ('the Application')². The amendments sought are:
 - a. the variation of condition 8 to increase the passenger cap by 1 MPPA from 18 MPPA to 19 MPPA; this would represent a 5.5% increase in overall passenger numbers;
 - b. the variation of condition 10 to allow for temporary amendments to the summer day and night-time noise contours;
 - c. the variation of condition 22 to provide for an update to the approved car parking management plan which is required as a result of the increase in passenger numbers;
 - d. the variation of condition 24 to provide for an update to the passenger travel plan which is required as a result of the increase in passenger numbers; and
 - e. the variation of condition 28 which is required to reflect the variations of the car parking management plan and the passenger travel plan.
8. The Local Planning Authority ("the Council") carefully scrutinised the Application over the course of eleven months. This included the engagement of independent expert consultants to perform detailed review of the noise, climate change and planning aspects of the proposal. Criticisms made of the Council in such a context are completely without merits. It has demonstrated beyond any peradventure of doubt its commitment to rigorous examination of the Airport's proposals, testing them correctly against the relevant policy framework and **objective** examination of the technical evidence, calling on appropriate expertise as required. The reality of that thorough exercise of objective scrutiny is that it demonstrates the overwhelming merits of what is proposed.

¹ CD7.03

² CD1.01

9. On 1 December 2021, the Council resolved to grant approval for the Application³ **in accordance with** a recommendation made by the Council’s expert advisers and planning officers, so reflecting the expert advice that they had received⁴. At that stage, the Council (through its democratically elected members) took the view that the Application did conflict with certain parts of the development plan in respect of the predicted noise effects, but rightly concluded that there were other material considerations demonstrating why it should be permitted given the limits of those effects. Since then, of course, (as summarised below) the further examination of the technical assessment has demonstrated that no perceptible noise effects will actually occur and the proposal is in fact in full compliance with the development plan.
10. The Application was called-in for determination by the Secretary of State for Levelling-up, Housing and Communities on 6 April 2022. More recently, the former Secretary of State for Transport exercised his powers under the TCPA 1990 to determine the application jointly. Together we refer to both as the ‘Secretaries of State’.
11. Given the call-in for decision-making, these Closing Submissions are longer than they might otherwise have been. They are, however, not exhaustive and no substitute for the detailed evidence that has been presented by the Applicant’s experts in written and oral evidence, along with the assessment contained in the requisite parts of the Environmental Statement documentation, all of which we commend to the Secretaries of State.
12. The case for the proposal has been thoroughly tested during this six-week inquiry. The inquiry has heard detailed evidence on:
- a. Noise;
 - b. Transport;
 - c. Climate Change;
 - d. Air Quality;

³ CD5.14

⁴ CD5.08

- e. Socio-economics; and
 - f. The Development Plan other policy and the planning balance.
13. That evidence has demonstrated that this Application does not breach any local or national policy. Indeed, the opposite is true. It benefits from strong policy support. Each of the topic areas is addressed in more detail below.
14. The main objection to this proposal has been presented by the organisation LADACAN which has appeared as a Rule 6 Party (along with CPRE Hertfordshire). LADACAN's witnesses on matters such as climate change and socio-economics are self-avowed opponents of aviation growth and national policy and therefore not seeking to give effect either to the development plan or national policy which applies to this application. Each of the individual criticisms of LADACAN and its witnesses are addressed below. But it can be noted at the outset that many of the points it has raised are simply irrelevant and go nowhere. For example, LADACAN has tried to impugn the Council for not enforcing against past breaches of the contours 2017-2019. But, it has since accepted that no planning harm arose from these breaches, and its own planning witness agreed that in circumstances where those breaches gave rise to no planning harm the Council took the correct course of action. LADACAN has continually sought to criticise the fact that the Airport is owned by the Council. Again, this point goes nowhere. LLAOL is a private operator and the Council has employed independent consultants to scrutinise the application thoroughly. LADACAN has also criticised the ES. As set out in more detail below, those criticisms also go nowhere. The Applicant has called witnesses who have addressed the contents of the ES as part of its evidence. The Applicant has bent over backwards to assist LADACAN in responding to its numerous requests for information and data (see CD15.37) and offered LADACAN a meeting with Bickerdike Allen Partners ('BAP') who conduct the noise modelling for the Airport and which formed the basis of the ES. LADACAN did not take up the offer.
15. At the close, those of LADACAN's witnesses that have sought to consider this proposal against planning policy have in fact now recognised that this is a proposal which complies

with such policy. It makes better use of the Airport's existing runway so as to allow 19MPPA to use it rather than 18MPPA, but without giving rise to any significant effects in terms of noise for EIA purposes and the noise changes would be imperceptible. In addition, this Application will result in more stringent noise contours in the long term than currently apply, coupled with a significantly enhanced noise insulation scheme.

16. The raising of the passenger cap by 5.5% will also speed up the rate of modernisation at the Airport. This is addressed further below and is not a factor which has not been challenged by any main party to the Inquiry. As the more modern aircraft are more efficient and less noisy the benefits are obvious.
17. The Application results in no significant impacts to the road network in terms of capacity or safety, as agreed by the Highway Authorities. That impact has been assessed without taking into account the beneficial impacts of the Travel Plan proposed. The Travel Plan which will be secured by this proposal (either that currently appended to the s106 or an updated draft) will introduce stretching targets and will markedly increase the amount of passengers and staff using sustainable transport to access the Airport.
18. The Application will also result in what the Applicant has identified as c.900 additional jobs and c£44million in GVA for Luton. These benefits are particularly weighty in the context of the Government's Levelling Up Agenda and the need to speed up recovery from Covid.
19. Overall, this is an application which fully accords with the development plan and the statutory presumption is that permission should be granted. Other material considerations also strongly support a grant of permission. This includes recently stated national policy. So even if any conflict with the development plan were found to arise, there would be very strong material considerations to grant planning permission anyway. On that basis, and for the reasons set out in more detail below, we commend this Application to you and urge you to recommend that the Secretaries of State grant planning permission for this

development as a matter of urgency, giving effect to the resolution of the Council in its capacity as local planning authority for this area.

Relevant legal principles

20. Before turning to the main topics that have been considered, it is convenient to address some relevant legal principles in light of some of the objections that have been mistakenly pursued during the inquiry.
21. A number of witnesses from LADACAN have expressed disagreement with national policy in relation to airport expansion. As such, it is necessary to emphasise that, as a matter of law, the merits or otherwise of policy is not a matter for this Inquiry (see *Bushell & Anr v Secretary of State for the Environment* [1981] AC 75). As set out below, that is for obvious reasons. The Local Plan has gone through a legal process which has included consultation, examination and adoption under the Planning and Compulsory Purchase Act 2004 ('PCPA 2004'). It is not for this Inquiry to question the policies it contains but to apply them in accordance with the test in s38(6) PCPA 2004. Similarly, Government policy has been consulted upon and determined by central Government in light of a range of evidence and decisions taken on policy grounds in the public interest. The merits of such policy are not for this forum. Indeed, it would be impossible for this Inquiry to reach contrary judgments as to, for example, the efficacy of measures set out in Jet Zero. As such, evidence presented on whether or not those measures will be realised is simply irrelevant.
22. There have been a number of recent appeal decisions which have applied national policies which are also in play in this Inquiry. They are the decisions in relation to: Stansted⁵, Bristol⁶ and Manston⁷. Further, the Inquiry has before it the High Court decision in relation

⁵ CD15.01

⁶ CD15.03

⁷ CD15.06

to a challenge to the expansion of Southampton Airport⁸ and the permission decision of Mrs Justice Lang in relation to the challenge to the Stansted Airport decision.⁹

23. In this case a basic principle of consistency in decision-making is engaged. In *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P.&C.R. 137 Lord Justice Mann stated:

‘... It was not disputed in argument that a previous appeal decision is capable of being a material consideration. The proposition is in my judgment indisputable. One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency in the appellate process. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system. I do not suggest and it would be wrong to do so, that like cases must be decided alike. An inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision.’

24. In this case, no good reason has been given for departing from the position adopted by Inspectors at Stansted and Bristol or the Secretary of State for Transport at Manston in relation to the application of Government Policy. As such, there is no good reason why the same approach should not be adopted here. Particularly relevant parts of those decisions are addressed throughout the closing submissions below.

Principle of Development

25. This is a proposal which is acceptable in principle and is strongly supported by both local and national policy. Support for sustainable growth of the Airport forms part of Strategic Objective 1 to the Local Plan and emphasises its strategic importance for the borough.¹⁰

⁸ CD15.03

⁹ CD15.04

¹⁰ CD9.07 p14

Policy LLP6 supports expansion where certain criteria are met (where applicable/appropriate).¹¹ Each of the criteria in LLP6 has been scrutinised in the Applicant's evidence and we commend to you Mr Bashforth's analysis of the proposal's compliance with the development plan, including in particular LLP6 and the relevant criteria, in his written and oral evidence. Relevant parts of Local and National policy are addressed under the various sections below.

26. This proposal does not include any new infrastructure. It will result in the Airport making best use of its existing runway, the terminal building and associated development. And as already mentioned, the evidence has demonstrated that it delivers growth without giving rise to any significant effects. In doing so it will bring economic benefits (in the form of jobs and economic growth (GVA)) to an area which is priority 1 in the Government's Levelling Up Agenda. It includes stretching and ambitious commitments to secure uplift in sustainable travel which will bind not only the additional 1mppa but the entire throughput of the Airport (19mppa). Taking just one of those commitments (an uplift in the use of sustainable transport modes by passengers by 4% over that achieved in 2019) will result in a reduction of 1.19mppa using the private car from accessing the Airport, which is more than the increase in mppa being sought by the Application therefore representing a key benefit of the proposal.

27. As such, this development is clearly supported by a raft of Government Policy documents published over the last decade.

28. The Aviation Policy Framework ('APF') emphasises the Government's support for aviation and the growth of the sector as a 'major contributor to the economy'.¹² More recently, Making Best Use of Existing Runways ('MBU')¹³ restated government support for Airports making best use of their existing runways.¹⁴ This document was summarised by the Inspectors at Stansted as follows:

¹¹ CD9.07 p32

¹² CD8.05 para 5

¹³ June 2018, CD8.09

¹⁴ Para 1.25

‘18. The in-principle support for making best use of existing runways provided by MBU is a recent expression of policy by the Government. It is given in full knowledge of UK commitments to combat climate change, having been published long after the Climate Change Act 2008 (CCA) and after the international Paris Agreement. It thoroughly tests the potential implications of the policy in climate change terms, specifically carbon emissions. To ensure that Government policy is compatible with the UK’s climate change commitments the Department for Transport (DfT) aviation model was used to look at the impact of allowing all MBU airports to make best use of their existing runway capacity. This methodology appears to represent a robust approach to the modelling.’¹⁵

29. Within the last six months this policy has been re-confirmed through Flightpath to the Future¹⁶ (‘FtF’), and the Jet Zero Strategy (‘Jet Zero’)¹⁷. Jet Zero makes clear that the Government has determined that its policy of making best use can be accommodated within its planned trajectory for achieving net zero by 2050.¹⁸ Importantly, the analysis which underpins Jet Zero has been done on the assumption that Luton Airport could expand to 32mppa.¹⁹ An expansion to just 19mppa falls well within the Government’s modelling and trajectory.

30. It is important to note that Government policy expressly connects aviation growth with levelling up²⁰. As the evidence of Mr Hunt has demonstrated, Luton is in dire need of levelling up. It is a priority 1 area for the Government’s levelling up agenda and the economic benefits which this proposal will provide are desperately needed here and now.

31. Although two witnesses for LADACAN expressed disagreement with government policy²¹, LADACAN’s planning witness, Mr Skelton, stated that central government

¹⁵ CD15.01

¹⁶ CD11.15

¹⁷ CD11.19

¹⁸ CD11.19 para 3.57

¹⁹ Annex A to Dr Osund-Ireland Proof

²⁰ See e.g. FtF CD11.15 p.26

²¹ Cait Hewitt and Dr Chapman

policy on aviation growth should be given full weight.²² Mr Skelton further agreed that if the proposal results in no significant adverse effects and no material adverse effects then the proposal would enjoy strong support from national policy.²³

32. As is set out below, this proposal does not result in any significant or material adverse impacts. Much of the evidence in relation to this has been agreed by LADACAN. In those circumstances this is a proposal which is acceptable in principle and is strongly supported by Government Policy.

33. With those principles in mind, we turn to consider the various topic areas that have been addressed at the inquiry in no hierarchical order, but in the order in which they were generally dealt with at the inquiry itself.

Climate change

34. The Applicant has comprehensively assessed the effects of the proposal in terms of climate change fully in accordance with the law, national policy and established best practice adopting a highly robust approach. That assessment demonstrates beyond doubt that the proposal will not have any material adverse impact in relation to climate change of any kind, as the Council recognised in its own determination of the application with the benefit of its own expert professional advice.

The International Context and the National Legislation

35. Climate change involves international issues. The UK is a signatory to various conventions to provide a global solution. These include the United Nations Framework Convention on Climate Change ('UNFCCC') (entered into force on 21 March 1994), the Kyoto Protocol to the UNFCCC (1997) and the Paris Agreement 2015, but its legal obligations arise under its domestic law response.

²² XX by LLAOL day 15 9.11.22

²³ XX LLAOL day 15 9.11.22

36. The UK's commitment to meeting the 'long term temperature goal' set out in the Paris Agreement²⁴ is legislated for in the Climate Change Act 2008 ('CCA 2008'). Section 1 of the CCA 2008 places a duty upon the Secretary of State for BEIS to achieve net-zero by 2050 as follows:

“(1) It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline.”

37. The duty is unqualified and is one that the Government has decided rests with the Secretary of State for BEIS.

38. Section 4 of the CCA 2008 places a duty upon the Secretary of State for BEIS to set carbon budgets for 5-year budgetary periods and 'to ensure that the net UK carbon account for a budgetary period does not exceed the carbon budget'. Again, the duty is unqualified and rests with the Secretary of State for BEIS. As is well-established and can be seen from the Government's Net Zero Strategy, the duty is one that applies overall (rather than to specific sectors) and the Government has a range of levers available to it to comply with the duty overall.

39. In accordance with paragraph 188 NPPF, the Inspectors and Secretaries of State taking this decision should assume that the CCA 2008 regime will operate effectively. Paragraph 188 NPPF states:

“The focus of planning ... decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume these regimes will operate effectively....”²⁵

²⁴ Limiting global warming to 'well below' 2 degrees Celsius above pre-industrial levels and 'pursuing efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels' (article 2(1)(a))

²⁵ Mr Bashforth confirmed in re-examination that this should attract full weight, Day 17 11.11.22

40. The decision should therefore be taken on the assumption that the Secretary of State will meet his duties under the CCA 2008, as was accepted by Ms Hewitt²⁶ and as recognised and applied by the Inspectors in the Bristol appeal decision.²⁷ That assumption relates to both aviation and road traffic emissions.
41. In the cross-examination of Dr Ösund-Ireland, LADACAN appeared to be trying to suggest that paragraph 188 did not apply in this case as the measures relied upon in assisting in the achievement of Net Zero were in development or yet to be realised. Dr Ösund-Ireland disagreed and that position is clearly right. Indeed, he highlighted that the same issues of uncertainty and technology development exist in the permitting regime.²⁸ LADACAN has not produced any evidence to dispute this.
42. It can be seen that paragraph 188 applies to all pollution control regimes. There is no policy basis for applying it to some (permitting) as opposed to others (CCA 2008). Such an approach would clearly be contrary to that taken for Bristol Airport.
43. CPRE Hertfordshire has addressed paragraph 188 in its closings. It can be noted that nothing stated in that paragraph was actually part of the evidence of Mr Berry. As Mr Bashforth made clear, no reason to give anything other than full weight to paragraph 188.
44. Neither the CCA 2008 nor any other act prescribes how the Secretary of State is to meet each carbon budget and the overall target of net-zero. In particular, there is no legislation which sets out the reductions which each sector of the UK economy must deliver. There is no requirement that each sector must be net zero rather, the net zero target must be met across the entirety of the UK. Therefore, it is a matter of political choice in satisfying the CCA 2008 as to which sectors of the economy are expected to deliver greater or lesser reductions. Further, if one sector (say, aviation) were in fact to emit more carbon than forecast in any budgetary period the Government is able to balance this by reductions from

²⁶ XX by LLAOL Day 3, 29.9.22

²⁷ Para 162, CD15.05

²⁸ XX by LADACAN Day 4, 30.9.22

other sectors (such as, energy supply sources) in order to balance the budget.²⁹ All of these issues are quintessentially matters for Government and are not matters for this Inquiry.

45. The Secretary of State, and Government, have a wide range of levers which they can pull at different times to achieve their policy targets. Again, this applies across all sectors of the economy which produce emissions. It also applies within the aviation industry itself. There is no basis at all for assuming that the Government would fail to meet its duty overall.
46. Moreover, even if one were to ignore paragraph 188 of the NPPF in this context, the Applicant has clearly demonstrated in its assessment that this scheme would not have any material impact on the ability to meet any of the carbon targets in any event.
47. The Government has adopted six carbon budgets to date. The fifth budget runs between 2028 and 2032 and was set in 2016. The first five budgets did not formally include emissions from international aviation and shipping. Rather, these emissions were taken into account by setting the budgets at a level which allowed headroom. The headroom for international aviation in the first five budgets was 37.5MtCO₂ p.a. (the ‘planning assumption’).
48. The Sixth Carbon Budget was announced on 21 April 2021. This covers the period from 2033-2037. This budget formally includes emissions from international aviation and shipping.
49. Two other statutory instruments are relevant to how carbon is addressed by the UK Government. The first is the UK Emissions Trading Scheme which is established under the Greenhouse Gas Emissions Trading Scheme Order 2020 pursuant to s44 of the CCA 2008 (‘UK ETS’). The UK ETS replaced the UK’s participation in the EU Emissions Trading Scheme (‘EU ETS’). As will be explored further below, this is one mechanism which the Government has chosen to control aviation carbon emissions. It applies to all flights

²⁹ Accepted by Ms Hewitt in XX by LLAOL on day 2 28.9.22

departing from UK airports either to other UK airports or airports within the EEA. This therefore covers the vast majority of flights departing from and arriving into Luton Airport.

50. The second relevant statutory instrument is the Air Navigation (Carbon Offsetting and Reduction Scheme for International Aviation) Order 2021 which governs CORSIA. This was developed by the International Civil Aviation Organisation (ICAO). It will be implemented in three phases: a pilot phase from 2021 to 2023, a first phase from 2024 to 2026 and a second phase from 2027 to 3035.

The Climate Change Committee

51. Reference has been made by LADACAN in particular to views expressed at various points by the Committee on Climate Change ('CCC') established by s.32 of the CCA 2008, but LADACAN's reference to the CCC and the advice it provides is misplaced in this context as it is Government that sets policy in light of that advice. CCC advises the Government on matters relating to climate change, including the carbon target, carbon budgets and international aviation. The CCC's role is advisory. Its advice is not binding on government. Further, the CCC does not make policy. That is a matter for the Government which is then not open to question in determining planning applications of this kind.
52. The Government has had regard to the CCC's recommendations and adopted them as it sees fit. For example, the inclusion of international aviation emissions within carbon budgets was in line with a recommendation by the CCC.³⁰ The CCC's earlier suggestion of a policy of no net expansion of airport capacity has been rejected as can be seen from Jet Zero and FtF for the reasons set out in those documents. The Government has set out its policy approach to achieving Jet Zero and Net Zero whilst allowing for expansion of airport capacity as modelled extensively when setting those strategies. Moreover, the expansion of airport capacity which the Government has envisaged in achieving Jet Zero far exceeds anything in issue in this case. Thus, for example, for Luton Airport alone the Government had assumed expansion of the Airport's capacity to 32mppa, far beyond the very minor increase of 1mppa in issue in this appeal. The Government's approach to Jet

³⁰ See CCC Report December 2020 CD11.07, p.30

Zero and modelling achievement of that Jet Zero is therefore based on very conservative and robust assumptions in any event.

53. CPRE Hertfordshire also (in cross examination, but nowhere in their evidence) attempted to place heavy reliance upon recommendations of the CCC³¹ but this is misplaced for the reasons identified above. In any event, Dr Ösund-Ireland highlighted that, in fact, the CCC has not issued any report relating to Jet Zero. Further, the CCC's latest report from June 2022³² represented a change in the CCC's position. The CCC recommends that there should be no net expansion of UK airport capacity 'unless the carbon intensity of aviation can accommodate additional demand'.³³ Jet Zero seeks to do exactly that, to reduce the carbon intensity in aviation.

Policy context – aviation emissions

54. Government Policy (consistently expressed in Jet Zero, FtF, MBU, the Airports National Policy Statement ('ANPS') or APF) is clear. Airport growth is not to be capped by reason of aviation emissions but supported on the basis that such growth has been modelled and accounted for in the models that underpin both MBU and now Jet Zero. In short summary:

- a. The Aviation Policy Framework³⁴ supports making best use of existing capacity (e.g. para 1.60);
- b. MBU³⁵ re-states that government policy is to make best use of existing runways and makes clear that the compatibility of this with the UK's climate commitments is a matter for national policy (see paras 1.11 and 1.12);
- c. FtF³⁶ also re-states the commitment to growth by confirming MBU (see e.g. footnote 5 on p.7);

³¹ XX by CPRE Hertfordshire Day 4, 30.9.22

³² CD11.40

³³ CD11.40 p348

³⁴ CD10.04

³⁵ CD10.13

³⁶ CD1.15

- d. Jet Zero³⁷ makes clear that the sector can achieve Jet Zero without the Government intervening to limit aviation growth (para 3.41). Again, the aviation growth modelled assumes that all airports expand consistent with existing permissions or draft proposals, including growth to 32mppa at Luton.
55. Greenhouse gas emissions from aviation have been and are addressed through national policy. It is clear from the fact that both MBU and Jet Zero have been developed on the basis of a model and analysis which assesses the impact of the Government's making best use policy were to be implemented at all UK airports that the support for such expansion caters for the consequential GHG emissions.
56. As noted above, for Jet Zero, the analysis included Luton Airport expanding to 32mppa.³⁸ Given this application is for an airport expansion of only 1mpp to a total of 19mppa (i.e. less than half the number assumed in the Government's modelling of aviation emissions for this Airport) it is simply inconceivable that this proposal would be anything other than compliant with Jet Zero in relation to the issue of climate change.
57. As stated above, it is established law that the merits of Government policy are not to be interrogated at this Inquiry (see *Bushell & Anor v SSE* [1981] AC 75 *per* Lord Diplock). Despite this, a central tenet of LADACAN's case has been to attempt to challenge the efficacy of the measures set out in Jet Zero. It is suggested by LADACAN that this goes to the weight that can be given to the policy. This is nothing more than a direct attack on Government policy itself which is not permissible.
58. Further such a position is also directly contrary to LADACAN's own planning witness who confirmed in cross-examination that central government policy should be given full weight.³⁹

³⁷ CD11.16

³⁸ Annex A Dr Ösund-Ireland's proof

³⁹ XX by LLAOL Day 15 9.11.22

Policy context – surface access emissions

59. Policy is clear on how surface access emissions are to be addressed by a planning proposal. Certain matters are for Government and the current policy is set out in the Transport Decarbonisation Plan.⁴⁰ The NPPF sets out what is expected of individual planning proposals at para 105:

‘The planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.’

60. Thus, developments are required to offer a genuine choice of transport modes. Similarly, paragraph 110 NPPF requires decision makers to ensure that applications have taken up ‘appropriate opportunities to promote sustainable transport modes’.

61. No main party has disputed that this is the correct approach to be taken and no main party to this inquiry alleges any breach of the Transport Decarbonisation Plan or the NPPF or local policy as a result of surface access emissions. LADACAN’s own witness, Ms Hewitt, expressly confirmed that LADACAN was not taking issue with surface access emissions.

62. In addition, the Applicant’s approach to the assessment of surface access emissions has been extremely robust in any event. The assessment has simply assumed that all additional trips to the Airport from the extra 1mppa would be additional trips generating GHG emissions which would not otherwise have occurred. In reality, of course, if the extra 1mppa are not permitted to fly from Luton, they are very likely to fly from other airports elsewhere, so generating surface access emissions to access such flights. And where those other airports require longer trips than to Luton the surface access emissions attributable to

⁴⁰ CD11.12

such trips would be greater, not less. And even if LADACAN had any basis for suggesting that the extra 1mppa seeking flights would actually choose not to fly at all if they could not do so from Luton (something that would be contrary to the aspirations of Government policy and for which there is no evidence to show that would happen), then the hypothesis appears to be that they would travel within the UK instead, but they would then potentially generate greater surface access emissions not less.

LADACAN's policy case

63. As noted above, it became clear that LADACAN's witnesses on Climate Change and socio-economics were putting forward their evidence on the basis of disagreement with the Government's policy. During EIC⁴¹ Ms Hewitt confirmed that her evidence presented the views of the Aviation Environment Foundation ('AEF'). The AEF is an organisation which campaigns in respect of aviation and, as confirmed by Ms Hewitt⁴², is seeking a change in aviation policy. Ms Hewitt confirmed that the AEF does not support Jet Zero Policy and is seeking a moratorium on expansion and aviation growth.
64. Similarly, Dr Chapman works for the New Economics Foundation ('NEF'). Dr Chapman accepted that one of NEF's mission statements is to stop airport expansion.⁴³ He further confirmed that he and NEF are opponents of government policy on airport expansion and he opposes Jet Zero.⁴⁴
65. Ms Hewitt sought to present views on the merits or otherwise of measures set out in Jet Zero (e.g. SAF). But Ms Hewitt's opinions that reject national policy and her (incorrect) assertions about the technologies relied upon in Jet Zero being only speculative or aspirational are wholly irrelevant to this Inquiry.⁴⁵ This is despite the fact that she was

⁴¹ Day 2, 28.2.22

⁴² XX by LLAOL day 3, 29.9.22

⁴³ XX by LLAOL, day 6, 5.11.22

⁴⁴ XX by LLAOL, day 6, 5.11.22

⁴⁵ Also stated by Dr Hinnells in XX by LADACAN Day 4, 30.9.22

repeatedly invited to give her views on the level of certainty in relation to each policy measure in re-examination.⁴⁶

66. The reason why national policy of this type, including the measures set out in Jet Zero, are not properly a matter for debate at this Inquiry became abundantly clear in the cross examination of Dr Ösund-Ireland by LADACAN. When questioned at length regarding the efficacy of measures in Jet Zero, he gave clear and compelling evidence as to their efficacy in direct contradiction of the assertions made by Ms Hewitt. For example, he highlighted that: (a) there was a wealth of evidence that fuel efficiency has been improving and continues to improve, (b) there are different types of SAF which are already being produced, along with those already in the process of being tested; (c) SAF is not an innovative technology as had been suggested, but one which is already available on the market with trackers as to its sale, where sales will accelerate, (d) airspace management and modernisation is happening now, and (e) there is no early reliance on electric aircraft and hydrogen fuel – the expectations on these are conservative, coming into play and being commercialised in the 2030s and 2040s but where the first hydrogen fuelled flight has already taken place. Again, as Dr Ösund-Ireland highlighted, these are not experimental technologies, they are technologies which are in the process of coming to market. The time taken for their ongoing development and exploitation has already been recognised in Jet Zero.⁴⁷ Dr Ösund-Ireland further highlighted, again contradicting the contrary impression given by Ms Hewitt, that at least 44 carbon capture plants already exist around the world and that there are three planning applications for similar plants in the UK. Other carbon capture technology is developing.^{48 49}

⁴⁶ Day 3, 29.9.22

⁴⁷ XX by LADACAN Day 4, 30.9.29

⁴⁸ XX by LADACAN Day 4, 30.9.29

⁴⁹ CPRE Hertfordshire further criticised Dr Ösund-Ireland for not presenting evidence to defend all of the assumptions made by Jet Zero. Mr Thomas alleged that ‘[Y]ou can’t take policy lightly, you have to interrogate it’⁴⁹ Such criticism is baseless. It is not for Dr Ösund-Ireland or for any other person to seek to defend or question the government’s policy. Quite apart from Mr Thomas’ central thesis which was the allegation that Dr Ösund-Ireland should have to assess whether the Government’s measures were ‘exemplary’ (XX by CPRE Hertfordshire Day 4, 30.9.22)

67. Dr Ösund-Ireland and Ms Hewitt both appeared to be in agreement that UK ETS is already an effective method of reducing carbon emissions. Dr Ösund-Ireland recognised that CORSIA currently has some shortcomings, but these are well recognised and have not been ignored but are the subject of current talks.⁵⁰
68. Dr Ösund-Ireland explained how GHG emissions are measured and reported in the UK each year ⁵¹. They are subject to scrutiny. The Government is therefore able to compare emissions against its own trajectory and to review and tailor its policy accordingly.⁵² The Council's climate change witness, Dr Hinnells stressed that the review mechanism in Jet Zero gives him 'a lot of comfort'. He stated that if one part of Jet Zero does not deliver or over delivers then there is an opportunity for review.⁵³ He explained that aviation policy is no different from other areas of climate change, e.g. building regulations or electric vehicles. No area of policy is fixed in aspic but is under review to ensure that the package is delivered.⁵⁴
69. The fact that there is a potential for differences of view from experts on such issues emphasises why Government policy which has been formed as a result of considering all of that evidence is obviously not a matter for debate at this inquiry and where the full range of evidence that underpins the Government policy is not before the inquiry. Dr Hinnells hit the nail of the head when he responded to a question from Inspector Clegg regarding trading scheme and emissions. He stated that it was a 'political decision way above my paygrade'.⁵⁵ That is true for all at this inquiry. The policy measures which the Government has put in place to address carbon from aviation growth are not for debate nor could they be. As Dr Hinnells correctly identified in re-examination⁵⁶, this Inquiry is not party to all of the consultation responses and assessments available to Government. This is particularly

⁵⁰ XX by LADACAN Day 4, 30.9.29

⁵¹ See Re-examination Day 4

⁵² Re-examination Day 4, 30.9.22

⁵³ XX by LADACAN Day 4, 30.9.22

⁵⁴ XX by LADACAN Day 4, 30.9.22

⁵⁵ Day 4, 30.9.22

⁵⁶ Day 4, 30.9.22

true of submissions in relation to the development of technology by companies keen to protect commercial secrets.

70. Ms Hewitt herself conceded that she was not aware of any evidence which would allow the Inspectors to come to a different view to that in Government policy as to the effectiveness of, for example, SAF.⁵⁷ The Government has consulted upon Jet Zero and taken into account evidence from a wide body of individuals, organisations and sources and arrived at a policy position. One of those consultees was the CCC⁵⁸. It is not the job of this Inquiry to seek to go beneath the policy and to challenge its merits. To do so would not only be impractical⁵⁹ it would also be unlawful.⁶⁰

71. Ultimately, despite her policy disagreement with Jet Zero, Ms Hewitt confirmed that the Application is in line with the Net Zero Strategy and is consistent with MBU and FtF. There is no reason why these policy documents should not be applied and given full weight (as confirmed by LADACAN's own planning witness, Mr Skelton). This is the position which has been taken by Inspectors and the Secretary of State in relation to recent airport expansion decisions even without Jet Zero. For Bristol Airport, the Inspectors summarised the policy position in relation to climate change before Jet Zero as follows:

‘...there is no policy which seeks to limit airport expansion or impose capacity limits – which would be the effect of dismissing the appeal in this case. This is not supported by national policy.’⁶¹

72. In the Manston decision the Secretary of State confirmed the latest position as follows:

⁵⁷ XX by LLAOL Day 3, 29.9.22

⁵⁸ Agreed by Ms Hewitt in XX by LLAOL, day 3, 29.9.22

⁵⁹ Ms Hewitt accepted that appeal decision makers aren't provided with all of the evidence to make policy decisions, XX by LLAOL, Day 3, 29.9.22

⁶⁰ See *Bushell & Anor v SSE* [1981] AC 75

⁶¹ CD15.05 para 215

‘The ‘Decarbonising Transport – A Better, Greener Britain’ (“the Decarbonising Transport Plan”) was published on 14 July 2021 and follows on from ‘Decarbonising transport: setting the challenge’ published in March 2020 which laid out the scale of reductions needed to deliver transport’s contribution to carbon budgets and delivering net zero by 2050. The Decarbonising Transport Plan sets out Government’s commitments and the actions needed to decarbonise the entire transport system in the UK. It sets out the pathway to net zero transport in the UK, the wider benefits net zero transport can deliver and the principles that underpin Government’s approach to delivering net zero transport....’ (para 139)

‘The Jet Zero Strategy: delivering net zero aviation by 2050’ (“the Jet Zero Strategy”) and the ‘Jet zero consultation: summary of responses and government response’ were both published on 19 July 2022. The Jet Zero Strategy states that Jet Zero can be achieved without Government intervention to directly limit aviation growth (JZS, paragraph 3.57). It sets out policies that will influence the level of aviation emissions the sector can emit, and maximise in-sector emissions reductions through a mix of measures that will ensure the UK aviation sector reaches net zero by 2050 (JZS, paragraph 3.1). These measures include: improving the efficiency of the existing aviation system; sustainable fuels; new technology; markets and removals; sustainable travel choices for consumers; and addressing non CO2 emissions (JZS, page 26). The Jet Zero Strategy also sets out how the aviation sector will achieve net zero aviation by 2050 and introduces a carbon emission reduction trajectory that sees UK aviation emissions peak in 2019, with residual emissions of 19.3 MtCO₂e in 2050, compared to 23 MtCO₂e residual emissions in the Climate Change Committee’s Net Zero Balanced Pathway (JZS, paragraph 3.58)’ (para 141)

‘...the Secretary of State is satisfied that Government’s Transport Decarbonisation Plan and the Jet Zero Strategy, which set out a range of non-planning policies and measures that will help accelerate decarbonisation in the aviation sector, will ensure Government’s decarbonisation targets for the sector and the legislated carbon budgets can be met without directly limiting aviation demand. For this reason, he does not accept the Examining Authority’s view that carbon emissions is a matter that should be afforded moderate weight

against the Development in the planning balance, and considers that it should instead be given neutral weight at the most.’ (para 149)

73. In line with the principle of consistency in decision-making (see para 23 above) there can be no good reason in this case to depart from the decisions and approach taken for Bristol Airport in relation to the long line of policy consistent with MBU, and now in respect of Manston Airport in relation to Jet Zero itself. Some reference has been made to a potential legal challenge to Jet Zero, but this is incapable of altering the position. And even if Jet Zero were ignored, Ms Hewitt confirmed that the Bristol appeal decision was handed down in a policy context which included all of the same policy documents save for FtF and Jet Zero. FtF and Jet Zero are in fact even more affirmative of growth than the ones which were before the Inspectors at that Bristol appeal, but the policy documents extant before FtF and Jet Zero are themselves sufficient.⁶²

74. Further support for this approach is found in the Stansted decision which was also taken prior to the publication of Jet Zero. In that decision the Inspectors held:

‘The in-principle support for making best use of existing runways provided by MBU is a recent expression of policy by the Government. It is given in full knowledge of UK commitments to combat climate change, having been published long after the Climate Change Act 2008 (CCA) and after the international Paris Agreement. It thoroughly tests the potential implications of the policy in climate change terms, specifically carbon emissions. To ensure that Government policy is compatible with the UK’s climate change commitments the Department for Transport (DfT) aviation model was used to look at the impact of allowing all MBU airports to make best use of their existing runway capacity. This methodology appears to represent a robust approach to the modelling.’ (para 18)

‘Since publication of MBU, UK statutory obligations under the CCA have been amended to bring all greenhouse gas emissions to net zero by 2050, compared to the previous target of at least 80% reduction from 1990 levels. In addition, the Government has indicated a

⁶² Accepted by Ms Hewitt in XX by LLAOL Day 3, 29.9.22

new climate change target to cut emissions by 78% by 2035 compared to 1990 levels, effectively an interim target on the journey to net zero. Notwithstanding these changes, MBU has remained Government policy. There are any number of mechanisms that the Government might use to ensure that these new obligations are achieved which may or may not involve the planning system and may potentially extend to altering Government policy on aviation matters.’ (para 24)

‘These are clearly issues for the Government to consider and address, having regard to all relevant matters (not restricted to aviation). The latest advice from the Committee on Climate Change (CCC) will be one such consideration for the Government but it cannot currently be fully known to what extent any recommendations will be adopted. The Government is clearly alive to such issues and will be well aware of UK obligations’ (para.25)⁶³

75. This decision has been confirmed as correct in law by Mrs Justice Lang in a decision which rejected a challenge to it as ‘unarguable’⁶⁴. That decision confirms that the Panel:

‘...correctly identified and understood the relevant national and local policies. It was correct to find that carbon emissions policies are addressed at a national level, in the MBU, and are not a matter for local planning decision-makers. It was entitled to conclude that the national policy “Making best use of existing runways” (“MBU”), published in June 2018, was made in full knowledge of the UK’s then commitments to combat climate change, and that it thoroughly tested the potential implications of the policy in climate change terms (DL 18). It was also entitled to conclude that the Government has not altered the policies in the MBU, notwithstanding changes to the targets for reduction of greenhouse gas emissions...’

⁶³ NB the climate change target is now 100% as opposed to 78% compared to 1990 levels and the Jet Zero Strategy has been published in full knowledge of this.

⁶⁴ CD15.04

76. In short, the previous decisions all point in one direction. The policy approach to adopt in relation to emissions and climate change, including aviation emissions, are a matter for central government. It has chosen to support aviation growth in the knowledge of the emissions that it entails, but on the basis that the modelled aviation growth can be accommodated through a range of measures that will address those emissions and still enable the Government to meet its targets and both jet zero and net zero. The merits of those policies and that approach are not up for debate at planning inquiries.

Non-CO2

77. LADACAN has also sought to raise an issue at the Inquiry with regards to non-CO₂ effects. LADACAN conceded that there is no government target or requirement to assess non-CO₂ effects as a matter of national policy.⁶⁵ The Government has taken account of the CCC's advice to monitor non-CO₂ effects, but does not consider it appropriate to impose any target or to introduce a requirement to assess such effects in any particular way. Rather, the Government's considered approach is to continue to investigate and research non-CO₂ impacts. It is clear that some of the measures which are directed at addressing CO₂ emissions will also cover non-CO₂ effects.⁶⁶ For example, the introduction of SAF.

78. In the Bristol Airport decision the Inspectors held that '[G]iven the extent of scientific uncertainty, and given the intention of the CCAP to consider the effects further, it would be unreasonable to weigh this matter in the balance against the proposal.'⁶⁷ The same is obviously true here.

79. But in any event, notwithstanding that approach, Dr Ösund-Ireland has considered the non-CO₂ effects of the proposal in his proof of evidence and identified that there is no reason why the carbon reduction strategy could not consider their effects further as understanding

⁶⁵ Accepted by Ms Hewitt XX by LLAOL Day 3, 29.9.22. Further, When asked how the Inspectors would be able to assess the impact of the non CO2 emissions Ms Hewitt stated she would 'need to think about how to present that information'

⁶⁶ Accepted by Ms Hewitt XX by LLAOL Day 3, 29.9.22

⁶⁷ CD15.05, para 207

of non-CO2 effects develops. On that basis, there is no reasonable reason for refusing permission on the basis of non-CO₂ effects.

Luton Borough Council Climate Emergency Declaration January 2020

80. Before going on to consider the actual scheme's emissions and the obvious point that they will have no material impact on the Government meeting its budgets (and they fall far below what is assumed in the modelling for Luton anyway) we briefly address LADACAN's mistaken assertion that aviation emissions fall within the scope of Luton Borough Council's Climate Emergency Declaration.⁶⁸ It is obvious from the face of the document itself, that they do not and could not have been intended to do so. On page 7 the declaration states:

'There are no legal implications of this report. It should be noted that, as alluded to in the report, emissions of greenhouse gasses from international aviation are not counted as emissions from sources in the UK for the purposes of carbon reduction targets. However, the Climate Change Act 2008 gives the Secretary of State the power to make regulations to include them. If they were to be included, it is likely this would have an impact on the Council's targets and policy because of its ownership of LLAL.'

81. There is simply no rational reading of that paragraph other than the fact that aviation emissions are not included in the Council's declaration and the Council does not suggest otherwise.

The Scheme's Emissions

82. Dr Ösund-Ireland presented evidence on the emissions impacts of the proposals. Ms Hewitt confirmed that she took no issue with the professionalism and diligence of Dr Ösund-Ireland and confirmed that he had identified, objectively, the full case which was the pros and the cons of the appeal.⁶⁹

⁶⁸ CD11.42

⁶⁹ XX by LLAOL day 3, 29.9.22

83. The emissions reported in the ES are highly precautionary for at least two basic reasons. First, they assume that all emissions are net additional. In other words, it has been assumed that each one of the additional 1mppa would not fly at all if they could not fly from Luton, so that the aviation emissions would not occur if the scheme does not go ahead. A moment's reflection on that assumption immediately demonstrates how robust it is. In reality a very large proportion of the extra 1mppa that the scheme would permit to fly from Luton would fly from another airport if they could not fly from Luton, so generating the same or very similar aviation emissions anyway. And even if some of the 1mppa did not fly, then it is highly robust to assume that they would not produce any travel emissions at all, for example through car journeys to alternative destinations by way of a staycation. So these assumptions attribute emissions to the scheme which are likely to arise anyway even if the scheme is not permitted to proceed.
84. Second, the calculation of emissions from passengers has been done on a modal split analysis of travel to the Airport which ignores the beneficial effects of the travel plan introducing a more challenging modal split (with consequential reduction in emissions for all) and ignores any of the beneficial impacts of DART which will again drive down emissions.
85. In light of the legislative and policy context it is necessary to identify the applicable test to consider in relation to emissions. It is simple. It is one of considering whether or not the emissions are so significant that they would have a material impact on the Government's ability to meet its climate change targets and budget.
86. Given that the Government policy has already assumed growth up to 32mppa from Luton Airport, it is obvious that the emissions of operating the Airport at 19mppa rather than 18mppa is incapable of having such an effect. But the emissions themselves which have been assessed (on a highly robust basis anyway) also demonstrate this as set out below.
87. Ms Hewitt's proof of evidence sought to apply a different test which has no basis. She asserted that because 'climate change represents an existential threat such that any

development causing an increase in CO₂ emissions would need to prove a very strong case for proceeding⁷⁰. Under cross-examination Ms Hewitt agreed that this test has no basis within policy.⁷¹ It flies in the face of national policy on aviation and ignores the basic building blocks of that policy and the modelling which underpins it which assumes expansion of Luton Airport (in terms of emissions generation) to 32mppa, not the minor change of an additional 1mppa from this scheme to 19mppa.

88. The most recent IEMA guidance states that impacts which are minor adverse or negligible are not significant. As set out in Dr Ösund-Ireland 's proof there are two definitions for minor adverse.⁷² The first relates to “*applicable existing and emerging policy requirements*” and being “*fully in line with measures necessary to achieve the UK’s trajectory towards net zero*”. The second refers to a “*budgeted, science-based 1.5°C trajectory (in terms of rate of emissions reduction) and which complies with up-to-date policy and ‘good practice’ reduction measures to achieve that has a minor adverse effect that is not significant*”

89. Despite calling no evidence on the issue, CPRE Hertfordshire sought to cross-examine Dr Ösund-Ireland on the basis that there was a ‘policy gap’ or ‘policy lag’ and therefore the IEMA guidance indicated that there might be a need to go beyond or behind policy in this case.⁷³ Such a contention is clearly nonsense. FtF was published in 2022. Jet Zero was published in July 2022 and prior to that existing policy stemming from MBU was applied in the Bristol Airport decision. Aviation policy could hardly be more up to date. As Dr Ösund-Ireland said, there is no policy gap in this case, **contrary to that which is alleged at paragraph 8(b) of CPRE Hertfordshire’s closing submissions.**

90. Indeed, the same approach to that set out in the IEMA guidance was applied at the Bristol Airport decision (prior to the publication of Jet Zero) where, at paragraph 216, the Inspectors stated:

⁷⁰ Para 1.5(a)

⁷¹ XX by LLAOL day 3, 29.9.22

⁷² Para 3.1.8

⁷³ XX by CPRE Hertfordshire Day 4, 30.9.22

‘Given current national policy, the approach of APF and MBU, the measures already in place, along with the potential for further measures in the future, the conclusion must be that the aviation emissions are not so significant that they would have a material impact on the Government’s ability to meet its climate change target and budget.’⁷⁴

91. CPRE Hertfordshire’s closings at paragraph 8 allege that the IEMA guidance has not been correctly applied in this case. This appears nowhere in its statement of case or in the evidence of Mr Berry. It is therefore unclear what evidential basis it has for this assertion.

92. Ms Hewitt confirmed in EIC⁷⁵ and in XX⁷⁶ that she did not take any issue with the actual emissions calculations presented by the Appellant in the ES. That is unsurprising given how robustly they have been calculated. The calculations set out in the ES are highly conservative. They assume all trips are net additional (as set out above) when the reality is that many of these emissions would occur anyway if the scheme were not to go ahead. Dr Ösund-Ireland confirmed in response to an Inspector’s question that the ES did not take into account measures which LLAOL is taking and will take in any event. In particular, the ES has been based upon the existing modal split.⁷⁷ Also, it has not taken into account the effect of DART.

93. The scheme’s emissions assessed in the ES are set out in Dr Ösund-Ireland’s proof of evidence and are presented in tables 5.7, 5.8 and figure 5.1 of ESA4.⁷⁸ In all cases, either for the with or without development scenarios total emissions are predicted to fall from the 2019 baseline. ESA4 reports that GHG emissions in the with development scenario peak in 2025. At their peak in that year, the total GHG emissions associated with the proposed scheme are 47-71 ktCO₂e/yr lower than the 2019 baseline (dependent upon the future scenario considered). A summary of emissions reductions in the with and without

⁷⁴ CD15.05

⁷⁵ Day 2, 28.2.22

⁷⁶ Day 3, 29.9.22

⁷⁷ Dr Ösund-Ireland in response to Inspector Holden Day 4, 30.10.22

⁷⁸ CD1.16

development scenario are set out at Tables 3.2 and 3.3 of Dr Ösund-Ireland's proof and reproduced below.

Table 3.2: Summary of % emission reductions from 2019 to 2050 Consented Development

	% Emissions reduction from 2019 for the Central Scenario (range: Upper and Lower Scenarios)				
	2025	2028	2032	2040	2050
Aviation	1% (0%-1%)	6% (4%-9%)	9% (4%-15%)	14% (4%-26%)	31% (12%-80%)
Surface access	30% (30%-32%)	35% (35%-44%)	45% (41%-63%)	68% (50%-87%)	82% (54%-92%)
Airport buildings and ground operation	32% (20-32%)	47% (35%-47%)	49% (37%-49%)	54% (42%-62%)	54% (49%-74%)
Total	9% (9%-10%)	15% (13%-19%)	20% (15%-29%)	29% (18%-43%)	46% (24%-84%)

Table 3.3 Summary of % emission reductions from 2019 to 2050 Proposed Scheme

	% Emissions reduction from 2019 for the Central Scenario (range: Upper and Lower Scenarios)				
	2025	2028	2032	2040	2050
Aviation	-1% ¹ (-2%-0% ¹)	4% (1%-7%)	6% (1%-12%)	11% (2%-23%)	29% (29%-80%)
Surface access	13% (13%-16%)	20% (20%-30%)	32% (27%-55%)	61% (38%-85%)	79% (43%-92%)
Airport buildings and ground operation	28% (15%-28%)	44% (32%-44%)	46% (34%-46%)	51% (39%-60%)	51% (46%-73%)

Total	4% (3%- 5%)	9% (7%- 14%)	14% (9%- 25%)	26% (12%- 41%)	44% (19%- 83%)
<i>Notes:</i> 1. <i>increased emissions.</i> 2. <i>ESA4 included a minor error reporting this value as 10% rather than 9%.</i>					

94. Dr Ösund-Ireland has fully considered whether the emissions would impede the UK's climate policy in reaching carbon net zero by 2050 and the achievement of carbon budgets and correctly concludes that they would not. In doing so he:

- Considered the emissions against the planning assumption up to the fifth carbon budget;
- Considered the emissions against the sixth carbon budget;
- Considered the emissions against the Jet Zero trajectory.
- Considered the emissions as compared with recent planning approvals;
- Considered the emissions cumulatively with recent planning approvals;

95. Whichever measure one chooses, it is clear that the emissions are not material. They will have no material impact on the UK Government achieving its carbon budget and net zero. Again, it is worth setting out the main tables in his proof.

96. Table 3.4 compared the consented and proposed schemes against the fourth and fifth carbon budgets and the planning assumption:

Aviation emissions (KtCO ₂)	2023 – 2027 Fourth carbon budget			2028 – 2032 Fifth carbon budget					
	2025 consented	2025 proposed	2025 diff.	2028 consented	2028 proposed	2028 diff.	2032 consented	2032 proposed	2032 diff.
Domestic	39.8	39.8	0.0	38.8	38.2	-0.6	37.0	36.9	-0.1
EEA	823.6	832.0	8.4	781.2	788.6	7.4	757.4	768.6	11.2
Rest of world	183.4	192.2	8.8	168.4	186.3	17.9	163.9	181.6	17.7

Total	1046.8	1064.0	17.2	988.4	1013.1	24.7	958.3	987.2	28.9
% of planning assumption	2.79%	2.84%	0.05 %	2.64%	2.70%	0.07 %	2.56%	2.63%	0.08 %

97. Table 3.6 of Dr Ösund-Ireland's proof sets out an assessment of the significance of the aviation emissions against the sixth carbon budget. It shows that the scheme would result in 0.014-0.015% of the sixth carbon budget.

98. Further, Dr Ösund-Ireland also submitted a note addressing the scheme's emissions against the Jet Zero trajectory.⁷⁹ This included the following table which compared the scheme's emissions against the Jet Zero Trajectory:

Year	In-sector trajectory (KtCO₂)	Proposed Scheme (KtCO₂)	%
2030	35,400	26.8	0.076
2040	28,400	28.8	0.101
2050	19,300	21.7	0.112

99. Dr Ösund-Ireland explained that the only reason that the proposal appears to drop behind the Jet Zero trajectory (para 3.2.11 proof) is because the ES was written prior to Jet Zero and therefore does not use the latest assumptions in Jet Zero, in particular in relation to SAF take up. If the ES adopts the same assumptions in Jet Zero, then the Airport is also on the same trajectory as that document.⁸⁰

100. As explained in INQ11, the percentages demonstrate that the emissions are insignificant and would obviously not materially impede the UK's trajectory towards net zero. zero at all.

⁷⁹ INQ11

⁸⁰ Re-examination Day 4, 30.9.22

101. Table 3.5 also compared the aviation emissions with recent aviation planning approvals:

Airport	Passenger Growth	2050 total aviation emissions (Proposed Scheme) KtCO₂/yr	2050 incremental increase in aviation emissions KtCO₂/yr	Increase in aviation emissions as a % of 37.5 MtCO₂ planning assumption	Status
London Stansted	8 mppa (35 to 43 mppa)	1130 – 1860	70 – 120	0.187 – 0.320	Approved with 43 mppa cap (subject to S106 Agreement)
Southampton International	1mppa (2 to 3mppa)	367	Cannot be determined	Cannot be determined	Approved with 3 mppa cap (subject to S106 Agreement)
Bristol	2mppa (10 to 12mppa)	413 – 488	66 – 78	0.175 – 0.207	Approved at Appeal, subject to Judicial Review
Manston	Not applicable (freight only)	730 (in 2040)	730 (in 2040)	1.95	Approved (subject to S106 Agreement)
London Luton Airport	1mppa (18 to 19mppa)	¹ 208 - 955	¹ 6 - 28	¹ 0.017 – 0.074	Pending
Total	15 mppa	2848 - 4400	872 - 956	2.325 – 2.549	
Note: 1. Based on Table 5A.7 of ESA4.					

102. As can be seen from the above, the emissions from the proposed scheme are by far and away the lowest of any of the projects which have been recently consented. All of those decisions have found that their emissions are not reasons for refusing the respective

schemes. There can be no rational basis for reaching a different conclusion here. The same is true when all of the above emissions are assessed cumulatively.⁸¹

103. Finally, Ms Hewitt herself conceded that there was no reason why the Inspectors would have any basis for departing from the approach at Bristol Airport. She agreed that the conclusion at para 216 of that decision applies ‘with even greater force’ to these proposals.⁸²

104. This is further clear from the fact that the assumption which lies behind Jet Zero in relation to Luton airport is that it would grow to 32 million passengers per annum.⁸³ In light of that, Ms Hewitt agreed that it was impossible for this proposal (simply moving from 18-19mppa) to impact or materially harm the assumptions in the Jet Zero Strategy.⁸⁴

105. Whatever benchmark or target is used, it is clear that this proposal cannot reasonably be considered to be capable of impeding the Government from achieving net zero and there can be no proper basis for refusing this proposal on the basis of aviation emissions.

106. As Dr Hinnells made clear in response to Inspector Clegg on Day 4⁸⁵ the fact that this proposal would lead to some additional emissions as compared with the ‘without development scenario’ is entirely in line with the Jet Zero trajectory. Jet Zero policy is in fact predicated upon achieving and supporting a 70% growth in air traffic (whereas this proposal is only proposing 5.5% growth at Luton as part of this application so the support should apply with even greater force).

⁸¹ See Dr Ösund-Ireland’s proof paras 3.2.9-10

⁸² XX by LLAOL day 3, 29.9.22

⁸³ CD11.42, p.21

⁸⁴ XX by LLAOL Day 3, 29.9.22

⁸⁵ 30.9.22

107. Even Ms Hewitt confirmed that there was nothing in the proposal which conflicts with Jet Zero.⁸⁶ Ms Hewitt agreed that no part of her evidence alleged a breach of the development plan with regards to emissions.⁸⁷ When asked how this proposal conflicts with national policy, Ms Hewitt was unable to give any answer.⁸⁸ Ultimately, Ms Hewitt accepted that the proposal was not in conflict with national policy, rather it was supported by it.⁸⁹ She was therefore agreeing with Mr Bashforth's conclusions at 6.13-16 of his proof.

108. In light of those concessions it is abundantly clear that Ms Hewitt's evidence, and LADACAN's case necessarily boils down to an objection to government policy to allow aviation growth. As stated above, the merits of the policy are not for this inquiry. A fact which was accepted by Ms Hewitt.

Surface Access, Ground Operations and Buildings Emissions

109. Ms Hewitt's evidence and LADACAN's case of objection related only to aviation emissions. Ms Hewitt and LADACAN did not take any issue with ground source or other emissions.⁹⁰ No one has objected to the proposal in light of these emissions and there is no proper basis for doing so.

110. As demonstrated in tables 3.2 of Dr Ösund-Ireland's proof (and replicated at para 91 above) non-aviation emissions are in fact predicted to fall between 2019 and 2050. The reductions in surface access emissions largely reflect the decarbonisation of the road transport sector in the UK and the increased provision of public transport.

111. It is intended that any approval of this proposal would be subject to a condition requiring the submission of a carbon reduction strategy for approval by the Local Planning Authority prior to the Airport exceeding 18mppa. The Inquiry already has before it an advanced draft in the form of an Outline Carbon Reduction Plan.⁹¹ That draft sets out short,

⁸⁶ XX by LLAOL Day 3, 29.9.22

⁸⁷ XX by LLAOL Day 3, 29.9.22

⁸⁸ XX by LLAOL Day 3, 29.9.22

⁸⁹ XX by LLAOL Day 3, 29.9.22

⁹⁰ Confirmed in XX by LLAOL Day 3, 29.9.22

⁹¹ CD4.05

medium and long term measures designed to ensure that LLAOL achieves carbon neutrality no later than by 2026 and to deliver net zero carbon for its direct operational emissions by 2040. The Airport is not currently subject to such obligations, as such the proposal for a carbon reduction plan (which will apply to the whole Airport and not simply the additional 1mmpa) is a significant benefit in its own right in terms of additional measures to address emissions. The same is true of the Travel Plan which also apply to all 19mppa and staff. This sets out stretching targets to achieve modal shift and is addressed further below.

112. Dr Ösund-Ireland explained in his evidence that reductions in emissions from airport buildings and ground operations reflect the expected reduction in the carbon intensity of grid supply. He also explained (by way of confirming the robust and precautionary approach that has been used in the Applicant's assessment) that in the absence of specific information available to quantify the anticipated reductions that will actually occur in gas use, fleet vehicles or refrigerants for future scenarios, these have been assumed to be constant whereas the reality will be better. Expected changes such as 'improved building management processes', 'further boiler upgrades' and 'fleet upgrades to electric or alternative fuel technologies' are anticipated.⁹²

113. Dr Ösund-Ireland also explained that the measures proposed by LLAOL to reduce emissions from surface access are all in line with national policy and local transport policy. He confirmed that residual emissions would not be material in preventing the UK Government policies from meeting successive carbon budgets or reaching carbon net zero.⁹³ No main party has produced any evidence or case to challenge this conclusion.

114. Similarly, Dr Ösund-Ireland concluded that the measures proposed by LLAOL to reduce emissions from airport buildings and ground operations are in line with the Government's aspirations for zero carbon airports by 2040. Again he confirmed that the residual emissions would not materially impede the UK Government policies to meet

⁹² Dr Ösund-Ireland proof 3.2.19

⁹³ Dr Ösund-Ireland Proof 3.2.18

successive carbon budgets or to reach carbon net zero.⁹⁴ Again, no main party has produced any evidence or any case to challenge this conclusion.

115. For all of these reasons, it is clear that climate change emissions have been thoroughly and robustly assessed and any emissions resulting from the scheme will not materially affect the ability for the Government to meet its carbon budgets and net zero in accordance with its policies and such emissions are therefore incapable of providing a basis for refusing the scheme; to the contrary, the scheme offers the opportunity to secure benefits in terms of the conditions applicable to the Airport in reducing its other non-aviation emissions from its activities overall which would not apply if the scheme is refused

Air quality

116. None of the parties to this Inquiry has presented any evidence to suggest that the proposal should be refused in whole or in part as a result of any impacts upon air quality and the assessment demonstrates that there are not material adverse impacts. The Council and the Applicant issued a joint statement produced by their respective independent experts on air quality. The conclusions of this state clearly:

‘4.1.1 ESA2 and ESA4 provide a detailed and robust air quality assessment, in compliance with the requirements of the EIA Regulations. The methodology follows best practice for assessments of this kind, using dispersion modelling to determine the concentrations of air pollutants arising from the various airport-related sources under various scenarios, and combining these with the future baseline.

4.1.2 ESA2 concluded that the air quality impacts of the Proposed Scheme were negligible and there not significant. Concentrations of all pollutants were forecast to be well below their respective AQOs in 2024 and impacts were considered to be of a negligible magnitude.

4.1.3 ESA4 considered the impact of a change in the year when 19 mppa would be reached from 2024 to 2025. As a result of changes, such as the replacement of older vehicles with newer ones that meet tighter emission standards or with electric vehicles, both emission rates and background pollutant concentrations are expected to be lower in 2025 than in 2024. The conclusions of ESA2 therefore remain valid. In 2025, the effects on both human health and ecological receptors would also be negligible and therefore

⁹⁴ Dr Ösund-Ireland proof 3.2.20

considered **not significant**. The same conclusion is reached if an adjusted baseline to account for compliance with condition 10 is used.

4.1.4 Air quality is generally improving and will be better in future than in recent years, with the Consented Development or with the Proposed Scheme. The development of Luton Airport to accommodate 19mppa is predicted to result in negligible changes in pollutant concentrations at receptors. These do not result in significant impacts.’

117. Dr Ösund-Ireland and the Council’s air quality witness, Mr Andrew Loosley presented evidence to the Inspectors on day 5 of the Inquiry (4.10.22) in order to answer the Inspectors questions. Further, Dr Ösund-Ireland attended day 9 of the Inquiry (20.10.22) in order to answer the questions of Neil MacArthur on behalf of Harpenden Sky.

Legislative and policy context

118. The legislative, regulatory and policy context for the assessment of air quality is set out at section 6.3 of ESA2⁹⁵. The legislative context can be summarised as follows:
- a. Directive 2008/50/EC on ambient air quality and cleaner air for Europe came into force on June 2008. It sets limit values for the protection of human health and critical levels for the protection of vegetation and ecosystems for selected pollutions that are to be achieved by specific dates. Regulated pollutants include: sulphur dioxide (SO₂), nitrogen dioxide (NO₂), oxides of nitrogen (NO_x), particulate matter smaller than 10 µm (PM₁₀), particulate matter smaller than 2.5 µm (PM_{2.5}), lead (Pb), benzene (C₆H₆), and carbon monoxide (CO);
 - b. The limit values and critical levels are legally binding limits on concentrations of pollutants in the atmosphere, which can broadly be taken to achieve a certain level of environmental quality. The values are based on the assessment of the effects of each pollutant on human health, taking into account the effects on sensitive groups, such as children, the elderly, and those with health conditions, or on vegetation and ecosystems;

⁹⁵ CD1.09

- c. The Environment Act 1995 and the Air Quality (England) Regulations 2000 require that local authorities periodically review air quality within their individual areas. This process results in an Annual Status Report each year;⁹⁶
- d. Where the assessment indicates that one of the Air Quality Objectives ('AQO') in the Government's Air Quality Strategy may potentially be exceeded the local authority has a duty to declare an Air Quality Management Area ('AQMA'). The declaration of an AQMA requires the local authority to implement an Air Quality Action Plan ('AQMP') to reduce air pollution concentrations so that the AQOs are met;
- e. The Air Quality Standards Regulations 2010 transpose the Air Quality Directive including the limit values into domestic legislation. The duty to meet limit values lies with the Secretary of State;
- f. The Air Quality Standards Regulations define ambient air as explicitly excluding workplaces and other places to which members of the public do not have regular access.

119. The policy context can be summarised as follows:

- a. Local Plan Policy LLP38⁹⁷ states:

 'Evidence on the impacts of development will need to demonstrate whether the scheme (individually or cumulatively with other proposals) will result in any significantly adverse effects with regard to air, land or water on neighbouring development, adjoining land, or the wider environment. Where adverse impacts are identified, appropriate mitigation will be required....'
- b. The Air Quality Strategy provides a framework for improving air quality at a national and local level. It imposes obligations on local authorities to manage air quality but does not place obligations on developers;

⁹⁶ LBC's annual status report for 2022 is at CD14.07

⁹⁷ CD9.07

- c. The Clean Air Strategy 2019 sets out how the Government proposes to tackle sources of air pollution;

- d. Paragraph 186 NPPF states:

‘Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when determining individual applications. Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.’

- e. Chapter 32 of the Planning Practice guidance addresses air quality. In response to the question ‘what air quality considerations does planning need to address?’ it states:

‘...

The Department for Environment, Food and Rural Affairs carries out an annual national assessment of air quality using modelling and monitoring to determine compliance with relevant Limit Values. It is important that the potential impact of new development on air quality is taken into account where the national assessment indicates that relevant limits have been exceeded or are near the limit, or where the need for emissions reductions has been identified

The local air quality management (LAQM) regime requires every local authority to regularly review and assess air quality in their areas. Air quality is a devolved matter, and for England these reviews identify whether national objectives in the Air Quality (England) Regulations 2000 have been, or will be, achieved by an applicable date.

If national objectives are not met, or at risk of not being met, the local authority concerned must declare an air quality management area and prepare an air quality action plan. This identifies measures that will be introduced in pursuit of the objectives and can have implications for planning.

Air quality considerations may also be relevant to obligations and policies relating to the conservation of nationally and internationally important habitats and species. The Air Pollution Information System and Natural England’s ‘Impact Risk Zones’ tool (available on MAGIC) can help to determine the types of

development proposal which can adversely affect these designated sites of special scientific interest and indicates when consultation with Natural England is required.’ (Ref ID 32-001-20191101)

- f. In response to the question ‘When could air quality considerations be relevant to the development management process?’ the PPG states:

‘Whether air quality is relevant to a planning decision will depend on the proposed development and its location. Concerns could arise if the development is likely to have an adverse effect on air quality in areas where it is already known to be poor, particularly if it could affect the implementation of air quality strategies and action plans and/or breach legal obligations (including those relating to the conservation of habitats and species). Air quality may also be a material consideration if the proposed development would be particularly sensitive to poor air quality in its vicinity.

Where air quality is a relevant consideration the local planning authority may need to establish:

- the ‘baseline’ local air quality, including what would happen to air quality in the absence of the development;
- whether the proposed development could significantly change air quality during the construction and operational phases (and the consequences of this for public health and biodiversity); and
- whether occupiers or users of the development could experience poor living conditions or health due to poor air quality.

120. The Joint Air Quality Statement sets out the criteria which are of the greatest relevance to assessing human health impacts of the proposal at para.2.4. These are:

- a. NO₂: annual mean concentration of 40 µg/m³ (micrograms per cubic metre);
- b. Particulate matter smaller than 10 µm in diameter (PM₁₀): annual mean concentration of 40 µg/m³, and daily mean concentration of 50 µg/m³ not to be exceeded more than 35 times a year; and
- c. Particulate matter smaller than 2.5 µm in diameter (PM_{2.5}): annual mean concentration of 20 µg/m³.

121. As explained by Dr Ösund-Ireland and Mr Looseley on day 5 of the Inquiry, the Airport itself is not subject to the above limit values as it is a workplace and is therefore subject to a different regulatory framework. Both experts explained that relevant receptors under the statutory guidance tend to be where people spend a long time, or where a receptor is particularly vulnerable (e.g. schools and hospitals). Paragraph 6.7.9 of ESA2 explains that guidance establishes that ‘exceedances of the health-based AQOs should be assessed at outdoor locations where members of the general public are regularly present over the averaging time of the objective.’⁹⁸

122. Paragraph 2.2.14 of the Joint Statement sets out the criteria of greatest relevance for assessing the potential ecological impacts of the Development as follows:

- a. NOX: annual mean concentration of 30 µg/m³;
- b. Nutrient nitrogen: annual deposition rate of 10 KgN/ha (kilogrammes of nitrogen per hectare); and
- c. Acid deposition (nitrogen and sulphur): site specific critical loads are included in ESA2, expressed in terms of kilograms of H⁺ ion equivalents per hectare per year (keq/ha/year).

Context

123. The Latest Air Quality Annual Status Report⁹⁹ sets out that there are three AQMAs in Luton. These are all the result of road traffic emissions and annual mean concentrations being observed above the Air Quality Standard of 40 µg/m³. Two of these are adjacent to junction 11 of the M1 motorway and the third is within the town centre. The ASR sets out the results of monitoring by LBC and LLAOL at a total of four automatic sites for NO₂, PM₁₀, PM_{2.5} and other pollutants, 84 diffusion tube sites for NO₂ and six adsorption tubes sites for volatile organic compounds.

⁹⁸ The relevant part of the guidance is paragraphs 1.51 and 1.52 of CD14.04 – Local Air Quality Management Technical Guidance LAQM.TG16. This makes clear that the objectives are ‘no relevant to places of work or other locations where members of the public do not have regular access’.

⁹⁹ CD14.07

124. As detailed at paragraph 2.2.8 and 9 of the Joint Statement, for NO₂, all sites exhibit a reduction in annual mean concentrations over the five year period 2016 to 2020 with the AQO met at the majority of roadside locations, at all non-roadside locations outside the Airport and at most locations within the Airport. In 2020, the annual mean AQO was exceeded at only one site (L7, 49.7 µg/m³). A non-AQMA roadside site on Vauxhall Way, L7 is not considered representative of relevant exposure due to being situated away from both amenities and residential accommodation. Annual mean and 24-hour mean PM₁₀ concentrations observed at the automatic sites over the five-year period 2016 to 2020 all met the relevant AQOs of 40 µg/m³ annual mean and the 24-hour mean not exceeding 50 µg/m³ more than 35 times in the calendar year.
125. As stated at paragraph 2.2.10 of the Joint Statement, roadside monitoring of annual mean PM_{2.5} over the five year period 2016 to 2020 was in the range 8.3 to 10.0 µg/m³. Annual mean PM_{2.5} concentrations observed within the Airport were in the range 9.6 to 11.6 µg/m³. These observed concentrations are within the AQO of 20 µg/m³ and within or very close to the proposed target value of 10 µg/m³ to be achieved by 2040.
126. Finally, there were no monitored exceedances of any AQO at any relevant receptor in 2021 (Joint Statement para 2.2.11).

Air Quality Assessment

127. The Air Quality Assessment is set out in ESA2¹⁰⁰ and ESA4¹⁰¹. It has been undertaken in accordance with guidance from the Institute of Air Quality Management ('IAQM') and Environmental Protection UK ('EPUK'). The IAQM guidance categorises impacts as 'substantial', 'moderate', 'slight', and 'negligible'. The IAQM guidance uses the term Air Quality Assessment Level ('AQAM') to mean an AQS, AQO or any other assessment level given in legislation policy or guidance against which the impacts of various pollutants may be addressed.

¹⁰⁰ CD1.09

¹⁰¹ CD1.16

128. The significance of air quality impacts upon ecological receptors was assessed primarily with reference to guidance issued by the Environment Agency. This guidance includes screening thresholds which, if met, indicate that no further assessment is required.¹⁰² The thresholds in the Environment Agency guidance are as follows:

- a. For Special Protection Areas, Special Areas of Conservation, Ramsar sites and Sites of Special Scientific Interest, the predicted impact was considered not significant if the long-term contribution from the Proposed Development is less than 1% of the long-term (annual mean) AQAL or if the total (i.e. contributions from the Airport and background sources) is less than 70% of the long-term AQAL.
 - b. For local nature sites (ancient woodland, local wildlife sites and national and local nature reserves), the predicted impact was considered not significant if the long-term contribution from the Proposed Development is less than 100% of the long-term (annual mean) AQAL.
129. At the outset it is necessary to recognise that the assessment is highly conservative as has been explained in evidence and no one has disputed this fact. It is based upon the 2019 modal share rather than the improved modal share actually achieved, and so it does not reflect the improvements in air quality that will have been achieved by modal shift. It has not taken into account any of the positive changes which the Travel Plan will require (for example a 4% increase in sustainable transport use by all 19 million passengers). Nor has it taken into account DART and its obvious positive effects on achieving modal shift and improving air quality. Nor has it taken into account any of the positive measures which the Carbon Reduction Strategy will require. As Dr Ösund-Ireland made clear on day 5 of the inquiry, many of the measures set out in that document will have corresponding beneficial impacts for air quality. One example he gave was replacing diesel vehicles with battery vehicles. Dr Looseley stated that he completely agreed that the Carbon Reduction Strategy would have a positive impact upon air quality. None of these positive impacts has been taken into account in the assessment which has resulted in it being conservative and

¹⁰² CD14.13

very robust, so only capable of overpredicting any potential adverse effects on air quality anyway.

130. The assessment was carried out using dispersion modelling to predict pollutant concentrations at receptor locations. The sources of emissions considered were:
- a. Aircraft¹⁰³, including main engines, auxiliary power units, brake wear and tyre wear;
 - b. Ground Support Equipment, i.e., plant and vehicles used airside;
 - c. Road traffic, both airport-related and non-airport;
 - d. Car parks; and
 - e. Background sources, i.e., other sources unrelated to the Airport.
131. The modelling follows the approach recommended by the Project for the Sustainable Development of Heathrow which is a project sponsored by the Department for Transport which aims to develop best practice in airport air quality modelling. Road traffic emission were calculated using emissions factors published by Defra, with dispersion modelling following guidance from Defra's Local Air Quality Management Technical Guidance (TG16).
132. Relevant sensitive ecological receptors from within the study area were identified using the Multi Agency Geographic Information for the Countryside tool ('MAGIC') and background deposition rates and critical load information for nitrogen deposition and acidity were determined using the Air Pollution Information System ('APIS').
133. The model assessed two future scenarios (the without scheme and with scheme case).
134. The assessment in ESA2 predicts that the impact of the proposed scheme would be negligible at all modelled receptors using the IAQM criteria for human health. In the assessment year of 2024, predicted annual mean concentrations of NO₂ were found to

¹⁰³ Contrary to the allegation of Mr MacArthur of Harpenden Skies INQ08

increase by, at most, $0.7 \mu\text{g}/\text{m}^3$ at any of the modelled receptors where humans may be exposed over the course of a year. The maximum concentration was predicted at receptor H83 close to the M1 motorway near Junction 11, where the total NO_2 concentration was modelled to be $22 \mu\text{g}/\text{m}^3$. Predicted annual mean NO_2 concentrations at all receptors would remain well below the AQO.

135. The greatest predicted total concentration of annual mean PM_{10} was $20 \mu\text{g}/\text{m}^3$ or 50% of the AQM. The greatest predicted concentration of annual mean $\text{PM}_{2.5}$ was $13 \mu\text{g}/\text{m}^3$ or 65% of the AQO.

136. With regards to particulate matter, in response to Inspector Holden's question, Dr Ösund-Ireland explained that it is existing background sources of $\text{PM}_{2.5}$ that make the greatest contribution and the scheme has no material impact. Existing background sources include, for example, industrial and agricultural emissions from the UK and continental Europe and sandstorms from the Middle East. The local contribution to $\text{PM}_{2.5}$ is much less than the contribution to NO_2 and therefore NO_2 tends to be the focus locally. The result of this is that national and international measures are in place to reduce $\text{PM}_{2.5}$ but it is difficult to have a discernible impact locally, albeit, certain mitigation measures which are directed at the reduction of NO_2 will also reduce $\text{PM}_{2.5}$.

137. The ESA2 assessment demonstrates that the impact of the proposed scheme would be negligible at all modelled ecological receptors, even taking the precautionary and highly robust assumptions explained above. The maximum predicted contribution from the Airport to annual mean NO_x concentrations was only $2.5 \mu\text{g}/\text{m}^3$, 8.3% of the AQAL. Predicted maximum contributions from the Airport to annual nitrogen deposition was only $0.37 \text{KgN}/\text{ha}$; 3.7% of the AQAL of $10 \text{KgN}/\text{ha}$. The maximum predicted contribution from the Airport to acid deposition was only $0.3 \text{keq}/\text{ha}/\text{year}$; 1.4% of the critical load.

138. ESA2 was updated by ESA4 in recognition of the fact that 2025 was identified as the year when 19mppa would be reached (as opposed to 2024 in ESA2). Air quality in the UK is generally improving as a result of controls on the sources of emissions (such as engines meeting tighter emission standards in new road vehicles). As such, when the 2024

emission factors from the DEFRA Emissions Factors Toolkit used in ESA2 are compared with those from 2025 the PM emissions are marginally lower and the nitrogen oxide emissions are 11% lower.¹⁰⁴

139. Unsurprisingly, ESA4 also found that background concentrations are expected to be lower in 2025 than in 2024.

140. As such, the magnitude of impact for ESA4 is expected to be very similar to that in ESA2, i.e. negligible in all circumstances.¹⁰⁵

141. Finally, as explained in ESA4 and in the Joint Statement, using a condition-10 compliant baseline does not change the conclusions of the assessment. The difference in concentration in the with development and without development scenarios would notionally increase by a very small amount. However, as significance criteria take account of the total pollutant concentrations with the proposed scheme before considering the magnitude of impact it was confirmed that all impacts would still be negligible¹⁰⁶ and no one disputes this.

142. No main party to the Inquiry has presented evidence challenging the results or conclusions of the air quality assessment in ESA2 or ESA4, or suggested that any of the effects are material.

Conclusion on Air Quality

143. The proposal's negligible impact upon air quality fully accords with local and national policy. The policy test in policy LLP38 is that a proposal should not have 'significantly adverse effects' on air quality. The proposal obviously fully complies with that policy.¹⁰⁷

¹⁰⁴ Joint Statement para 3.3.2

¹⁰⁵ Joint Statement para 3.3.4

¹⁰⁶ Joint Statement para 3.4.2

¹⁰⁷ See Proof of Mr Bashforth para.7.7

144. The NPPF (para 186) states that proposals should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants. As set out in ESA2 and ESA4 this will be the case. The proposal will not cause or significantly increase the risk of any limit values or national objectives being breached. As such, this policy is fully complied with.¹⁰⁸
145. This policy compliance is clear even without reliance upon mitigation measures which the scheme will provide. Indeed, no main party to this inquiry alleges a breach of policy as a result of the air quality impacts of the proposal.
146. The Airport is already undertaking measures to reduce emissions. Dr Ösund-Ireland explained on Day 5 that the Airport is, for example, replacing its gas boilers. It is also contributing to the monitoring of air quality in the borough (as reported in LBC's ASR¹⁰⁹).
147. The approval of this application will also require the Airport to implement further measures which will improve local air quality. The Travel Plan sets out targets which are to be met across the entire 19mppa, despite the fact that this application is only for an additional 1mppa. To put that in context, a 4% increase in passengers using public transport as proposed in conjunction with this scheme equates to an additional 1.19million passengers out of the 19 million overall using sustainable transport modes. That is more than the total additional number of new passengers being permitted by the scheme. Similarly, targets relating to staff travel will apply across all staff and not merely the additional staff members which this application will lead to.
148. Further, measures in the Carbon Reduction Strategy will also have a beneficial impact on air quality. This was agreed as common ground by Dr Ösund-Ireland and Mr Loosley on day 5 of the Inquiry and is not disputed by anyone. Measures such as the

¹⁰⁸ See Proof of Mr Bashforth para 7.8-9

¹⁰⁹ CD14.07

replacement of diesel engines and the use of SAF will have positive impacts for air quality as well as carbon.

149. Properly understood, therefore, the measures in the Travel Plan and the Carbon Reduction Strategy should be seen as a real benefit of this proposal in relation to air quality. The proposal itself does not give rise to any material air quality adverse impacts. By contrast, the proposal will in fact institute measures which will mitigate the impact of the Airport as a whole and not merely the result of the 1mppa which are applied for as part of this proposal.

Transport

Introduction

150. Evidence in relation to transport impact was heard by round table on 18 October 2022. No main party to the Inquiry has raised any issue with regards to the transport impact of the proposal. Both NH and LBC, as the relevant highway authorities, have concluded that the transport impact of the proposal is acceptable. Significant weight should be given to the views of these statutory consultees. Once again, it is important to bear in mind what this application is for and what it is not for. It is an application to vary the specified conditions, including that which limits the existing Airport for use by 18mppa and to allow for 19mppa, an increase of 1mppa. The proposed development is therefore for that additional 1mppa, not for the underlying development for 18mppa that is already permitted. The local and national policy requirements therefore apply to that proposed development alone.

Policy context

151. LLP6(vii) states:

‘...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:

...

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.’

152. LLP31, part B states:

B. Planning Permission will be granted for proposed developments that meet the criteria below, where these are relevant to the proposal:

- i. minimises the need to travel;
- ii. provides a sustainable transport choice with priority for buses, pedestrians, and cyclists;
- iii. reduces road congestion particularly at peak times;
- iv. reduces the safety risk to motor vehicles, non-motorised, and vulnerable users;
- v. provides cycle parking / storage; and
- vi. ensures the quality of the local environment is not compromised.

153. As stated by Mr Bashforth in chief part iii of part B cannot be read as requiring a development to fix an existing problem if and where one exists on the road network. Such a requirement would not be consistent with Regulation 122 Community Infrastructure Levy Regulations 2010 which requires that obligations must be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. The only lawful interpretation of LLP31B(iii) must be that a development is only required to reduce congestion directly and related to its own scheme. As set out below, this is something which the Travel Plan will achieve, but it will also deliver benefits that go beyond this requirement as it will directly benefit the existing operations and usage of the Airport by the 18mppa already permitted.

154. Further, in this context it should be noted that the application for 18mppa (originally granted in 2014) was required to mitigate its own impact on the network and did so. That application included highway works including junction improvements.¹¹⁰ As such, policy LLP31B(iii) cannot be read as requiring this application for variation of

¹¹⁰ See description of development CD6.03

conditions to provide mitigation for that which has already been consented and already mitigated.

155. Appendix 7 of the Local Plan sets out the requirements for transport assessments, transport statements and travel plans. Paragraph 4 states, as material:

‘Transport Assessments should include the following information:

- a description and analysis of the existing transport conditions;
- details of the expected (economic, environmental and social) impact of the proposed development on the local transportation system;
- a Travel Plan detailing the proposed approach to mitigate the expected impact of the proposed development on the local transportation system;
- details of existing and proposed journeys to and from the proposed development site by all modes of transport (both vehicular and pedestrian);
- a construction management plan; and
- details of proposed loading areas, arrangements for manoeuvring, servicing and parking should cross reference any scale drawings and plans.’

156. Those requirements have to be seen in the context of paragraph 2 which states:

‘Developers and applicants will need to agree in advance with the relevant Highways Authorities (including Highways England if required), the scope, content and standard of any Transport Statement or Transport Assessment that is to be submitted in support of any planning application.’

157. Thus the Local Plan makes clear that the key decision makers in relation to the adequacy of any Transport Assessment (‘TA’) are LBC and, where relevant, National Highways (‘NH’). In this case, the scope of the TA was agreed by both LBC and NH.

158. To illustrate this point, Inspector Holden asked whether the Appendix 7 criteria were met if the TA provided percentages of passenger flows but the answer must be that it is. First, the scope and content of a TA in this respect is a matter for agreement with the relevant highway authorities and the TA was scrutinised by them. Second, there is no requirement in paragraph 7 for absolute numbers to be provided rather than percentages (the relevant bullet point refers to ‘details’). Third, the information provided has enabled the highway authorities to assess the effects of the proposed development in this case (ie

the additional 1mppa). Fourth, if any further information is required it could have been requested and it would have been provided.

159. As to the main relevant paragraphs of the NPPF, these state:

‘105. The planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.’

‘110. In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:

(a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;

...

(d) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.’

‘111. Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.’

‘113. All developments that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed.’

As set out below, the scheme complies with all of the requirements of national policy.

The proposal

160. The parts of the proposal which are relevant to this topic are: the addition of 1mppa through a variation to condition 8, an update to the approved car parking

management plan through a variation to condition 22, an update to the travel plan through a variation to condition 24 and consequent variations to condition 28.

Highway Impacts – Introduction and Position of the Parties

161. No main party to the inquiry has alleged that this proposal will lead to unacceptable highway impacts, or any breach of local or national policy in this regard. Nor has any main party alleged that there have been any deficiencies in the transport assessment. Both of the relevant highway authorities have confirmed that they have no objection to the proposal and the LPA has submitted evidence in this regard from Christopher Godden (Highway Development Control Manager (Planning)) and Antony Swift (Principal Transport Planner).
162. Jacobs has been acting on behalf of NH in relation to the proposal. They have confirmed that they are content with the impact of the proposed scheme and have confirmed that they have no objection to it proceeding. They also agreed the scope of the TA.¹¹¹
163. LBC has been closely involved in the production of the TA, TP and CPMP.¹¹² Key areas of agreement are set out in the SoCG and at para.5.4 of Mr Ojeil's proof of evidence. In particular LBC has agreed:
- a. The study area selected for the TA;
 - b. The methodology used for the TA (including base data and modal share);
 - c. That forecast traffic flows would not have a significant impact on the operation of the highway network;
 - d. No additional car parking spaces related to the increase in patronage would be appropriate and will assist in more airport users shifting to sustainable transport modes; and

¹¹¹ TA, p51, CD1.12

¹¹² Mr Ojeil proof 5.2

- e. The proposals meet national and local policy requirements, As set out in the SoCG, the LBC agrees that the proposal complies with LLP6, LLP31, LLP32, LLP39, NPPF111.

164. The fact that both NH and LBC agreed the scope of the TA is significant. As set out above, Appendix 7 to the Local Plan makes clear that the scope, content and standard of the TA are matters to be agreed with the highway authorities (para.2). That is exactly what occurred in this case.

Highway Impacts assessed in the TA and the ES

165. As stated above, the assessment of the existing road network and the study area were agreed with LBC and NH.¹¹³ The assessment has been undertaken on a very robust basis without taking into account the beneficial impacts of DART which is shortly to come on line¹¹⁴, nor has it taken into account the beneficial impacts of the measures proposed in the Travel Plan, Further, as set out in Mr Ojeil's proof it has been conducted using the maximum passenger and flight volumes projected to occur. Flight estimates were based upon a typical October average weekday aircraft movement, avoiding half terms and weekends when background traffic could be expected to be lower.¹¹⁵ The average load factor used was assumed to be 90% (like the summer peak) to ensure that any individual peaks and troughs in the day were not underestimated.¹¹⁶¹¹⁷ The TA is therefore very robust.

¹¹³ Mr Ojeil proof 3.19

¹¹⁴ DART will provide an improved public transport connection for airport passengers and staff between Luton Airport Parkway Station and the terminal (Ojeil proof 3.23)

¹¹⁵ In response to a question from Inspector Holden on Day 9 Mr Ojeil explained that this approach was discussed with the highway authorities.

¹¹⁶ Mr Ojeil proof 3.31

¹¹⁷ On Day 9 of the Inquiry the Panel queried whether the Airport's peaks were same as those on the road network. Mr Ojeil confirmed that there were some differences as can be seen from the graphic on p.3 of Appendix 1 to Mr Hunt's proof. However, if one were to be assessing the Airport's peaks then one would be assessing the road network at 5-6am in the morning where the background traffic is minimal. Therefore, it is best and more robust to assess the highest peak which will be when background traffic on the road network is highest.

166. Further, the Applicant used a model which was put together by LBC and which LBC requested be used in relation to this application.¹¹⁸

167. This robust assessment shows that in such peaks of activity, the total two-way traffic increase would only be 121 vehicles in the AM peak and 93 vehicles in the PM peak.¹¹⁹ Mr Ojeil highlighted in his evidence that these figures are not significant for this network, particularly given the fact that 85% of traffic will travel up and down the M1 via Airport Way.¹²⁰ This leaves only 15% to be distributed on local roads. As Mr Ojeil explains in his proof of evidence even if these trips on local roads were doubled in magnitude there would be no significant impact on local roads in terms of queues, delays and congestion over and above existing conditions and the existing permission for 18mppa. No main party or witness has contradicted that conclusion.

168. As set out in Mr Ojeil's proof of evidence following consultation with NH and LBC it was considered that no further detailed transport modelling was required given the fact that the net increase in traffic flows is unlikely to have a significant effect on the road network.¹²¹

169. In responses to questions on Day 9 of the inquiry Mr Ojeil explained that though there were a couple of junctions with slow moving traffic (junction 10 of the M1 and Junction 12 in the TA) they are not any at capacity and there is room for vehicles to queue. He explained that this proposal would not affect how any of the junctions perform. He highlighted that if the highway authorities had been concerned about the capacity of any junction then they would have insisted on individual modelling of those junctions.¹²² Mr Ojeil explained that Jacobs had looked at this issue for NH and the M1 and NH had no concerns. Mr Godden explained, on behalf of the local highway authority, that the

¹¹⁸ Confirmed by Mr Godden and Ms Crouse on Day 9 of the Inquiry 20.10.22

¹¹⁹ Tables 3-3 and 3-4 Mr Ojeil proof and confirmed orally by Mr Ojeil on day 9 of the Inquiry 20.10.22, also at tables 10.4 and 10.7 of the TA

¹²⁰ Mr Ojeil proof para 3.89

¹²¹ Mr Ojeil proof 3.38

¹²² Day 9 20.10.22

same was true of LBC. He stated that the increases were marginal and therefore not a concern and emphasised that this conclusion was reached even without taking into accounts the beneficial impacts of the travel plan in reducing trips by car.¹²³

170. Mr Ojeil did include some additional analysis to assist the Inquiry as part of his proof of evidence. This is set out at paragraph 6.16-6.23. This showed that the additional traffic on local roads is predicted to be very low. In order to do this Mr Ojeil used 2016 traffic flows in combination with Automatic Traffic (ATC) Department for Transport data.

171. The Panel requested some additional information in relation to highways impact which has been provided:

- a. In response to a question from Inspector Holden the Airport has submitted further information in relation to the 85% figure used in the modelling. The highways technical note appends a note from Arup which explains that the 85% figure was derived from CAA data which was subsequently fed into the model;
- b. The Panel also requested additional information with regards to junction and link flows on roads within the study area. This has been provided at part 2 of the technical note. As explained in that note, it has used the dataset which the TA was based upon (which was from a different year from that used at paragraphs 6.16-23 of Mr Ojeil's proof). Some of the percentage change figures are therefore slightly different from those included in Mr Ojeil's proof. However, the differences are minor and confirm the same overall position. As can be seen from either table 6-2 of Mr Ojeil's proof of evidence or part 2 of the Technical Note, the increase in cars is (in the worst case) around one additional car per minute (as stated by Mr Ojeil in the round table session);
- c. The Panel also requested confirmation of the car occupancy assumptions used in the TA, this has been confirmed as being 1.86%.

¹²³ Day 9 20.10.22

172. The Panel stated that it did not want any additional analysis or commentary from the Applicant, and the Applicant has complied with this request (and removed analysis which was previously within the note). However, if the Panel has any queries about the additional information requested then the Applicant would ask for the chance to respond to those queries as a matter of fairness.

173. Ultimately, the TA shows that no material impact will arise from the proposal (even prior to taking into account DART or the measures in the Travel Plan). The highway authority's witness, Mr Godden, concluded as follows in his proof:

'The approved Arup traffic forecasting model demonstrates that the effect on traffic in the a.m. and p.m. peak periods is minor and will not have a significant effect on the surrounding road network.' (3.3)

174. Mr Godden's proof further explains the highway authority's view that the proposal complies with the relevant national and local policies (see appendix A), consistent with that of the Applicant's expert consultants. As a statutory consultee, the views of the highway authority should be given very significant weight.

Highway Impacts, Conclusion

175. In light of all of the evidence, together with the views of NH and LBC, it is clear that the highway impacts of the proposal are acceptable and will not lead to the breach of any policy. Further, there is no lawful basis for requiring any contribution to additional highway works or measures. Mr Gurtler confirmed on behalf of the Council that neither LBC nor NH was seeking any contributions to junction improvements from this proposal.¹²⁴ In circumstances where the highway authorities are of the view that works or contributions to such works are unnecessary such contributions cannot be compliant with the test set out in Regulation 122 of the CIL Regulations.

Car Parking

¹²⁴ Day 16 10.22.22 response to Inspector Holden question

176. This proposal does not include any new car parking. As explained in the technical note and also orally during day 9 of the hearing, there are no concerns with regards to the existing parking capacity at the Airport. First, with regards to staff, 775 spaces are already provided for LLAOL employees. It was explained that the rule of thumb is that three parking permits can be sold for every space (due to shift patterns). It is also the case that there are a further 1,657 staff parking spaces which are associated with buildings leased by companies/organisations whose work is associated with airport operations but who are not employed by LLAOL directly. Further, not all staff are on site at any one time either due to working from home or due to shift patterns (of which there are three per day).
177. Mr Jennings explained to the Inquiry that around 3-4,000 staff tend to be on site each day. A more precise figure is not achievable given the variety of industries which form part of the Airport complex and the fact that security pass data does not give the full picture of employees on site.
178. Mr Ojeil explained on day 9 of the Inquiry that the Applicant conducts staff surveys and there have been no complaints from members of staff that they cannot park and there have been no reports that staff are parking elsewhere or on local roads. Put simply, if the Airport or the local planning authority were concerned that staff car parking would be an issue with this application, the Applicant could and would have applied for additional spaces as part of this application and the local planning authority would have sought such spaces. There has not been a need to provide more and this is consistent with a general emphasis on encouraging travel to work patterns using the alternative modes available. To the same effect, the local highway authority has not raised any concern with regards to car parking availability for staff.
179. As to parking for passengers, the Applicant operates four public car parks. Long Stay (4,151 parking spaces), Mid-stay (1281), TCP1 (1,699), TCP2 (1,924). This totals 9,055 parking spaces. TCP2 opened in 2020 and created an additional 8% capacity.

180. There is also offsite public car parking which is operated by third parties and which the Applicant does not control. As set out in the technical note, of these spaces 1,500 have been added since 2019. Operators of these car parks offer shuttle busses to and from the Airport.
181. Therefore, since 2019 total combined car parking capacity for members of the public has increased by 22.3% since the Airport managed a throughput of 18mppa. Given this, it is clear that the Airport has sufficient capacity to accommodate the additional passengers.
182. With regards to any concerns about airport-related parking on nearby streets, Mr Godden explained that in 2017 the local highway authority carried out a consultation following complaints from the Vauxhall Park area of Luton relating to Lineham Road and Eaton Green Road and the area in between. One area did request parking restrictions, but the wider area did not want such restrictions. He further explained that there was some non-residential parking occurring, but it was concluded that this did not relate to the Airport. Ultimately, additional parking restrictions were not taken forward at the time. Of course the local authority can always decide to introduce such measures in the future if the need ever arose. Mr Godden explained that parking is still being monitored. Any problems in the area appears to have been addressed. He explained that LBC has been considering expansion of the controlled parking zone for a number of years but there are no current plans to do anything at all in terms of further parking restrictions. There is no identified need for it. However, he confirmed that the Council is continuing to monitor and review the situation and will react in a positive way if necessary.
183. Ultimately, the local highway authority has been and is continuing to monitor whether the Airport's operations are leading to problems of parking on nearby roads and they have concluded that it is not. The highway authority has not raised any concerns with regards to car parking capacity at the Airport.

184. Condition 24 of the 2017 Planning Permission required a Car Parking Management Plan ('CPMP'). This was approved in January 2016 (ref 15/000659/DOC). A new Car Parking Management Plan was produced to accompany this application. However, following the constructive comments from the Panel the Applicant now proposes that an updated and enhanced Car Parking Management Plan should be submitted to the Council for approval and should form part of the Travel Plan. This is provided for in the s106 agreement and is explained further below.

ASAS, Travel Plan and CPMP

185. Following constructive observations made by the Panel during the highways and s106 round tables, the Applicant has revised its s106 agreement in order to ensure that there is co-ordination and consistency between the Airport Surface Access Strategy ('ASAS'), the Travel Plan and the Car Parking Management Plan ('CPMP').

186. The s106 now provides for the current ASAS to be updated and submitted to LBC for approval. This would be done within 12 months of the Implementation of the permission if it is granted and, in any event, prior to exceeding 18mppa. The s106 provides that the ASAS should be a public facing document which sets out:

- a. an overview of surface access modes at the Airport;
- b. the targets which the Operator is required to meet under the Travel Plan or Updated Travel Plan (as applicable);
- c. an overview of the measures which the Airport is putting in place to achieve the targets set out in the Travel Plan or Updated Travel Plan (as applicable); and
- d. a report on progress against targets set out in the Travel Plan or Updated Travel Plan (as applicable)

187. The s106 provides that the Transport Forum shall meet at least annually to review the Airport's progress against the ASAS and to assist the Airport in meeting its targets. Further, the s106 provides that the Applicant is to report on the operation of the ASAS as

part of its Annual Sustainability Report which is to be provided to both the Council and to the Transport Forum. The ASAS is to be reviewed every five years.

188. Again, having taken on board the Panel's comments, the Applicant has produced a revised version of the Travel Plan which is appended to the s106. This revised draft embodies significant benefits delivered by the proposal and meets the relevant policy tests. However, in the event that the Secretaries of State consider that a further revision, or enhanced plan, is required then this has been provided for in the s106 agreement. In the event of such a conclusion, the s106 agreement provides that the Airport may not operate at above 18mppa unless and until it has submitted a further revision of the Travel Plan for approval (ie in the event an updated version is considered necessary by the Secretaries of State before the development can proceed).

189. The Travel Plan as proposed contains stretching targets to achieve modal shift amongst staff and passengers. It also sets out some of the measures which will be employed to achieve this in the short, medium and long term. The targets include achieving 35% of staff travelling to the Airport by sustainable transport modes. This is a 7% increase above the 2022 target which the Airport is currently subject to. There is a stretch target of 37% by 2028.

190. In relation to passengers, the Travel Plan includes a target of 47% by sustainable transport modes by 2024. This is 11% above the target which the Airport is currently required to achieve by 2022. It is a 4% increase over and above that which was achieved in 2019. This is hugely significant. As the new target will apply to all 19mppa it will result, in absolute terms, in a 1.19million net decrease in passengers travelling by non-sustainable modes (since that achieved in 2019).

191. This is a benefit which should not be underestimated. The Airport is not currently subject to such targets and this level of modal shift will clearly have a material beneficial impact on emissions and traffic impacts. It is undoubtable that the Travel Plan ensures that the proposal will meet the terms of LLP31 part B and all relevant paragraphs of the NPPF,

but the Applicant has provided for the Secretaries of State to require an enhanced Travel Plan if considered necessary.

192. It is now proposed that the Car Parking Management Plan will form part of the Travel Plan. The current Travel Plan proposes that the CPMP is to be submitted to LBC for approval. The CPMP will be required to contain, as a minimum:

- a. Details of car parking controlled by LLAOL;
- b. Measures to monitor capacity of those car parks;
- c. Measures to encourage staff and passengers to reduce reliance upon private vehicle use and in particular single occupancy vehicle use; and
- d. That such measures may include product strategies, car sharing initiatives and active advertising of alternative means of accessing the Airport.

193. Again, the CPMP will assist in encouraging modal shift which is encouraged by both Local and National policy.

194. The Travel Plan (including the CPMP) is to be reviewed every five years. Further, the Applicant will be required to meet with the Council at least every year in order to review the effectiveness of the Travel Plan which will include how the Applicant is progressing against its targets. The Applicant is further required to report annually on the Travel Plan as part of its Sustainability Report.

195. Accordingly, not only are the transport impacts of the scheme acceptable, but the scheme will deliver significant benefits in terms of enhancing the sustainability of the Airport in transportation terms through the Travel Plan that is proposed and the stretching targets to improve the modal split by securing greater use of sustainable transport modes and consequently contributing to the reduction of congestion and emissions from the Airport's existing permitted operations.

Noise

Introduction

196. One of the singular features and compelling benefits of this proposal is that it proposes to make better use of an existing airport (entirely in line with Government policy) to accommodate a modest expansion of Imppa, with all the socio-economic benefits that would also bring, but without having any material adverse effects on the noise environment at the same time as delivering enhanced mitigation measures for the existing noise environment through what is now proposed under the Noise Insulation Scheme. Mr Thornely-Taylor with all of his unparalleled experience of airport proposals was therefore correct to remark on this achievement. By the close of this inquiry, it was unanimously agreed by all the noise experts who appeared at the inquiry that the noise effects of what is proposed would be imperceptible to anyone (constituting less than 1dB increase in the L_{Aeq} level) even for those currently subject to higher levels of noise, but at the same time it would offer an enhanced noise insulation package in a number of important respects despite the absence of any perceptible change in the noise environment. The case of granting permission in such circumstances is overwhelming, even before one considers the other benefits of the proposal in the planning balance. The common ground reached by the noise experts (including Mr Roberts called on behalf of LADACAN) was a fundamental change in LADACAN's original asserted case. Unfortunately LADACAN itself has simply failed to recognise what its own expert has confirmed.

197. As set out in its statement of case, LADACAN's entire case was originally predicated on the basis that this application would cause unacceptable noise (see LADACAN Statement of Case paras 1, 5, 6, 9, 10, 20-26, 28-34). And it was on the basis of such claims that it has misrepresented the effect of this scheme to the general public and its own members, invoking anxiety and fears which simply have no proper foundational basis. Its assertions have been contradicted by the expert evidence that LADACAN itself called.

198. Through the Inquiry process and the testing of the evidence, the following points are now agreed by all:

- a. the Applicant's assessments of noise had used the correct thresholds for LOAEL and SOAEL¹²⁵;
- b. there is a considerable body of evidence that supports the use of L_{Aeq} metrics in the assessment of aviation noise due to its correlation with annoyance¹²⁶;
- c. LADACAN was not alleging that the application would result in any significant impacts as a result of considering either the L_{Amax} or N Above contours¹²⁷;
- d. Mr Thornely-Taylor had identified all of the correct policies for the assessment of noise (both local and national)¹²⁸;
- e. where noise levels are above SOAEL policy allows for mitigation, including in the form of noise insulation schemes to address exceedances¹²⁹;
- f. ESA4 identifies that no residential or non-residential receptor would be affected by 1dB or more as against a condition 10 compliant baseline¹³⁰;
- g. a change of less than 1dB would be 'negligible' and 'imperceptible'¹³¹;
- h. a change of less than 1dB would not be 'material'¹³²;
- i. any noise impact would be the temporary variations to noise contour requirements¹³³;
- j. this application does not involve airspace change¹³⁴;
- k. even if the assessment methodology for the new runways at Gatwick and Heathrow had been applied there would be no change to the conclusion that the noise impact would be negligible and imperceptible¹³⁵;
- l. subject to Mr Robert's assertions about what baseline to use Mr Roberts agreed all of the conclusions of Mr Thornely-Taylor if the baseline for comparison was what

¹²⁵ Confirmed by Mr Roberts in EiC Day 10 1.11.22

¹²⁶ Accepted by Roberts in XX Day 11 2.11.22

¹²⁷ Accepted by Roberts in XX Day 11 2.11.22

¹²⁸ Accepted by Roberts in XX Day 11 2.11.22

¹²⁹ Accepted by Roberts in XX Day 11 2.11.22

¹³⁰ Accepted by Roberts in XX Day 11 2.11.22

¹³¹ Accepted by Roberts in XX Day 11 2.11.22

¹³² Accepted by Roberts in XX Day 11 2.11.22

¹³³ Accepted by Roberts in XX Day 11 2.11.22

¹³⁴ Accepted by Roberts in XX Day 11 2.11.22

¹³⁵ Accepted by Mr Roberts in XX Day 11 2.11.22

is currently permitted to operate at the Airport under the existing permission for 18mppa¹³⁶;

- m. Mr Skelton subsequently accepted that Mr Roberts' suggested use of a baseline of 12.4 mppa was wrong in principle (applying the EIA Regulations correctly) and the Applicant's baseline of the 18mppa was the correct one to use¹³⁷;
- n. it is unusual to have an application for an expansion of an airport which has negligible effects on all receptors which are going to be affected¹³⁸;
- o. a significant benefit of the proposal is that it can achieve additional passengers with negligible effects on anyone in the area in terms of noise¹³⁹;
- p. If there are no unacceptable impacts then there is no reason why the contours cannot expand¹⁴⁰;
- q. LADACAN does not dispute or contradict the benefits of the enhanced noise mitigation scheme¹⁴¹; and
- r. If ESA4's conclusions are accepted there is **no** environmental reason to refuse permission¹⁴².

199. At the time Mr Roberts gave evidence for LADACAN, he identified only 3 issues of dispute with the expert assessments of the effects of noise by BAP, Mr Thornely-Taylor and Mr Holcombe: (a) whether to use 12.4mppa or 18mppa as the correct baseline; (b) questions about the calibration of the noise model; and (c) questions over the use of the metric. That last issue fell away during his evidence when he confirmed that he did not dispute the assessments of the Applicant that no material noise increase would arise whether one used the L_{Aeq} metric, the L_{max} or N- contour metrics and the baseline of 18mppa. He was unable to offer any coherent explanation for the use of 12.4mppa as a baseline as it was based on his misreading of the EIA Regulations. Mr Skelton

¹³⁶ Accepted by Mr Roberts in XX Day 11 2.11.22 confirmed by Mr Thornely-Taylor in chief RTT Day 13 4.11.22

¹³⁷ Accepted by Mr Skelton in XX Day 15 9.11.22

¹³⁸ Accepted by Mr Roberts in XX Day 11 2.11.22

¹³⁹ Accepted by Mr Roberts in XX Day 11 2.11.22

¹⁴⁰ Accepted by Mr Lambourne in XX by LPA Day 12 3.11.22

¹⁴¹ Accepted by Mr Roberts in XX Day 11 2.11.22

¹⁴² XX of Mr Lambourne by LPA Day 12 3.11.22

subsequently confirmed in his evidence on behalf of LADACAN that Mr Roberts' reading of the EIA Regulations was incorrect and the 18mppa was the only correct baseline to be used. Mr Roberts and LADACAN's case sole remaining issue was over the calibration of the noise model historically. Standing back, it is simply impossible to understand this concern as a matter of basic logic. The noise model is verified each year. It was corrected in 2015 as a result of that verification exercise. The verification exercise compares the noise model predictions against actual noise monitoring. It demonstrates that the noise model is producing accurate results. If it were not, the verification exercise conducted each year would reveal a discrepancy which it does not. It is as simple as that.

200. LADACAN's case is now reduced to:¹⁴³

- a. residual concerns about the calibration of the model that took place in 2015, coupled with an assertion that NMT3 is over-estimating noise levels (something which Mr Roberts himself accepted would simply mean, if it were occurring, that the Applicant's assessments are over robust as it would mean that the Airport operations and effect are therefore less than the Applicant is assuming);
- b. concerns that the contours will not be complied with in the future.

We deal with each of these residual concerns, as well as those which LADACAN originally raised but were conceded not to be well-founded below

201. It is unfortunate but indicative of the nature of LADACAN's criticisms that LADACAN is only interested in trying to make out criticisms, rather than agree common ground, in this whole process. Throughout this called-in application process, the Airport has been bombarded with requests for information without any explanation as to why such information was needed or being requested. The Applicant has laboriously met these requests despite the extraordinarily time-consuming nature of doing so. But in the spirit of cooperation and to try and bring some sensible end-point to this exercise of attrition by

¹⁴³ Although Mr Skelton accepted in cross-examination that the baseline used by the Applicant was correct, he was invited to reverse his evidence in examination in chief. On that basis, the baseline to be applied is addressed further below.

LADACAN, the Applicant offered LADACAN a meeting between its independent expert noise consultants BAP – acknowledged experts and highly respected noise modellers in this field as endorsed by Mr Thornely-Taylor, Mr Roberts and Mr Holcombe) who conduct the noise modelling for the Airport and LADACAN’s chosen noise consultant. The offer was not limited to any particular subject matter. Regrettably that offer was not taken up. Mr Lambourne unilaterally chose not to respond to this request and, it emerged, did not even tell his own noise consultant (Mr Roberts) that the offer had been made. Had that meeting have happened it is quite possible that a lot of time and energy expended at this inquiry could have been saved. Instead, without informing any of the parties, Mr Lambourne embarked upon his own data exercise with a view to producing his own assessment of it shortly before the noise evidence was to begin, but long after evidence had been exchanged. What is all the more perplexing about this exercise is that the highpoint of his analysis is to put forward a hypothesis that noise monitor NMT03 is over-reporting noise from aircraft. Not only is that an implausible suggestion, as no expert has suggested that NMT03 is in any way faulty and it simply records noise from planes (having been adjusted in relation to motorway noise), but it is a suggestion that only demonstrates how robust the noise modelling and monitoring for the Airport is. As Mr Roberts agreed, if NMT03 is overestimating actual aircraft noise occurring, it simply means that the Airport’s operations are actually quieter than assumed and so the whole approach of the Airport is robust.

202. In any event, as is set out below, none of LADACAN’s ‘concerns’ is well founded. Crucially, however, even if any of them were made out the conclusions of the noise assessment would be unaffected (even on LADACAN’s own evidence, as explained in relation to each one below). Therefore, whatever LADACAN’s remaining points of dispute, the agreed position is that noise impacts of this proposal are: negligible, insignificant in EIA terms, imperceptible, non-material and temporary¹⁴⁴. On that basis there is no possible noise-related reason on which to refuse permission for this scheme. Indeed, as Mr Roberts accepted, it is a significant benefit to be able to add additional

¹⁴⁴ Each of these descriptors was put to the noise witnesses, including Mr Roberts, and agreed.

passengers without causing anything other than negligible effects on any person in terms of noise.¹⁴⁵

203. Before going on to each of the matters in dispute it is helpful to address, briefly, the forecasts and the issue of past breaches and enforcement.

Forecasts

204. It is relevant to put in context an inherent unfairness that the Applicant has faced throughout this process as a result of LADACAN's approach to the Application and the Inquiry itself. This is, of course, an application for an increase in passengers at Luton Airport of 1mppa (from 18mppa to 19mppa), with a resultant temporary increase in the size in the contour areas that are the subject of existing conditions. The time period in question to which those increases relate to is short-term (e.g. 2023-2030 by which latter time the contour areas return back to and below those already set). In contrast to many other types of application, this is self-evidently not an application for a significant expansion of Luton Airport operations seeking to change the surrounding noise environment long into the future. For the purposes of this Application, the Applicant has produced all necessary environmental information to show any effects of what it is proposing. And for these purposes, for this increase in passengers and temporary effects, the Airport has produced forecasts of its operations for that period based on its own intimate knowledge of its operations and the airlines that operate there, in consultation with those airlines. Whilst all "forecasting" of any type involves what people have referred to as uncertainty, any such uncertainty is inherently reduced in this exercise because it is examining a much shorter period and a confined increase in operations. The Airport has the best evidence available to produce such forecasts because it is reflecting its own known operational abilities and the known airlines that fly from the Airport and their operations (including aircraft orders) for that relatively short time into the future. Moreover, and what is fundamentally ignored by LADACAN and others, the Airport is committing itself to those forecasts in any event because the conditions and obligations it is proposing limit the

¹⁴⁵ Accepted by Mr Roberts in XX Day 11 2.11.22

effects of its operations to those that would arise from those forecast operations. Thus the noise contour areas it is proposing are based on those operations.

205. The ES (as it is for any airport expansion) is based on those forecasts. The operations that have been forecast in terms of numbers of aircraft type have been set out in the ES information which has been available to all concerned. No one has actually produced **any** evidence to contradict those forecasts, or suggested alternative forecasts, or even sought to speak to the Airport or the airlines concerned in any challenge to those forecasts. The Council has scrutinised the Application throughout this process and unsurprisingly is content with those forecasts. There is no reason why one would not be, given that they relate to known airlines and known aircraft types (they are not forecasts which depend upon new aircraft with new technology becoming available in the future as was the case previously in the more long-range forecasting that was required in 2012). And when this Application was called-in for determination by the Secretary of State, no issue with the forecasting was raised as an issue. And when the CPRE Hertfordshire and LADACAN produced their Statements of Case the only Rule 6 parties – no explanation of any challenge to the forecasting was identified. And when evidence was exchanged, there was not a single challenge in the evidence from LADACAN to the forecasts that had been produced by the Airport (save for queries over those which related to a 12.4mppa baseline). Where questions have been raised by one third party (Mr Wingfield) about forecasts, these have been answered by the Airport in writing as one would expect. However, Mr Wingfield confirmed that his concerns were to the effect that the Airport's operations are in fact going to be quieter than the forecasts suggest,

206. For the purposes of this inquiry the Airport provided further information about the forecasts themselves in the material attached to Mr Hunt's evidence to which he spoke but to which no material challenge was made when he gave his evidence. **The Appellant asks the Panel to check their notes of the questions asked of Mr Hunt very carefully. It is not the case that LADACAN sought to challenge the forecasts but Mr Hunt stated he wasn't a forecaster (as alleged in LADACAN's closing submissions). Rather LADACAN simply didn't put any material case. This is unsurprising given its evidence hadn't challenged the**

forecasts. It is therefore inherently unfair and wrong in principle for LADACAN in its case to have tried to pursue late in the day questions about the forecasts. The Applicant will therefore certainly say that it has not been given a fair crack of the whip if any criticisms of this kind are now entertained after it has called its evidence from Mr Hunt in that context.

207. But without prejudice to that basic point, the Applicant is still not being told how any of the points LADACAN has sought to raise in questions of other witnesses that followed Mr Hunt (who were not giving evidence about forecasting) can reasonably go anywhere anyway. As explained by Mr Bashforth in his evidence in chief¹⁴⁶ the forecasts have been produced by the Airport in conjunction with the information from the airlines. The modelling has been done upon them. That modelling has then been used to set the contours applied for. The contours, in effect, tie the permission down to the forecasts. As Mr Bashforth explained, the Airport will have to work within its contours and it will therefore have to ensure that the forecasts are met.

208. It is therefore regrettable, and still unexplained to what end, that during the noise evidence LADACAN attempted to question the forecasts for the first time. They sought to use a note which was submitted by Mr Wingfield (INQ27) during the inquiry, to put in document INQ54. This was one of the suite of documents which LADACAN submitted to the Inquiry just before the evidence on noise was heard. It was submitted after Mr Hunt had presented his evidence to the Inquiry. The Applicant made a request to respond to those documents in writing but this was refused by the Panel. INQ54 must therefore be seen in that light and the Applicant's position set out above.

209. In giving evidence in chief, in answer to a question from Inspector Clegg, Mr Roberts stated that this document was based upon Mr Wingfield's analysis.¹⁴⁷ After hearing the evidence of both Mr Roberts and Mr Lambourne on this table, the Applicant remains unclear on what it purports to be showing. In chief Mr Lambourne stated that he 'may have

¹⁴⁶ Day 17 11 November 2022

¹⁴⁷ EiC Day 10 1.11.22

gone completely off the rails’ in relation to INQ54. He suggested it showed that the ratio of Wizz A320neos vs ceos was different to that being predicted by the Applicant in 2028.¹⁴⁸ If so, this suggests that the table was in fact something different from that produced by Mr Wingfield, as Mr Wingfield has not taken issue with the Applicant’s fleet forecasts for Wizz. Mr Lambourne confirmed that he had not spoken to any airlines in conducting his exercise and he had not made any assumptions about the retirement of aircraft. This is a fundamental omission as has been set out in INQ67 that responds to and identifies Mr Wingfield’s errors. This has particular implications for any assumptions relating to easyJet (considered further below).¹⁴⁹

210. Mr Lambourne also stated in cross examination that he had relied upon information the airlines have published in their corporate fleet forecast slides and simply assumed a proportionate fleet mix for the fleet at Luton. Again this is another error as set out in INQ62. Page 2 of that document sets out how Wizz are expected to fly a greater proportion of A320s from Luton (as opposed to A321) than their network wide fleet. This document explains that:

‘Wizz are expected to fly a greater proportion of A320s from Luton (as opposed to A321s). The reason for this is that Wizz will want to preserve the frequency of their flights and network breadth. If Wizz were to fly entirely A321s from Luton, then due to the additional seat capacities on the flights and the passenger cap, Wizz would have to reduce their flight numbers by around one tenth (one for every five A320 movements it currently operates, with the current operation split evenly between A320s and A321s). This would not be possible on some routes which are only served by, say, two flights a week. Operating some smaller aircraft on certain routes will enable Wizz to maintain frequency and the breadth of the network which they fly to.’

¹⁴⁸ EiC Day 10 1.11.22

¹⁴⁹ Although Mr Lambourne’s conclusion related to Wizz part of his workings also relate to assumptions made for easyJet as is clear from INQ54.

211. Mr Lambourne therefore has indeed ‘gone off the rails’ in relation to INQ54 and no weight can be placed upon that document.¹⁵⁰

212. LADACAN then made a further allegation (through the cross examination of Mr Bashforth) that the Airport had not consulted upon its forecasts.¹⁵¹ Paragraph 20 of LADACAN’s closing submissions states that Appendix 1 was ‘late information’. That is simply not the case. Mr Bashforth highlighted in response that ESA4 contains details of the forecasts and the evidence upon which the forecasts was based.¹⁵² He confirmed in re-examination that the information included in ESA4 is consistent with that which is contained within Appendix 1 of Mr Hunt’s proofs. It contains a series of footnotes which gives the URLs for publicly available documents which take one to the evidence of the orders and pronouncements of the various airlines. Further Table 8B.1 contains details of the number of each type of plane which has been forecast to fly in both the with and without scheme scenarios. Mr Bashforth confirmed that LADACAN did not raise any issue with the forecasting and its justification in ESA4 as part of their consultation response.¹⁵³ Nor did LADACAN take any issue with the evidence relied upon for the forecasts in its proofs of evidence. The allegation of a lack of consultation is simply wrong and again inherently unfair.

213. Mr Wingfield, on behalf of Harpenden society did seek to question the forecasts in a note (INQ27) that he submitted to the inquiry whilst it was running. As stated above, the Applicant responded to this note in writing (INQ62). This note explains where Mr

¹⁵⁰ Some comments made by Mr Wald on day 17 of the Inquiry, 11.11.22 indicated that LADACAN may be wishing to raise new points on the forecasts. He indicated that he took issue with the Applicant’s response to Mr Wingfield’s questions to Mr Thornely-Taylor regarding the application of the ratio between the 92-day summer period and the annual ATMs. In particular, Mr Wald alleged that paragraph 17 of Appendix 1 to Mr Hunt’s proof is to be read as the 92day period always representing 29% of the annual flows. That is wrong. The paragraph makes clear that the 92 day period represented 29% of the full year program and it ‘can reasonably be expected that this proportion would not materially change in future years’. That does not mean no change and the ratios can in any event be worked out from comparing the 92day figures in table 8.1B of CD1.17 and the annual flows. Given LADACAN has not taken any point on the issue of the ratio between the annual and 92-day flows in either its written or oral evidence it is difficult to see where it seeks to take this point.

¹⁵¹ XX by LADACAN day 17 11.11.22

¹⁵² CD1.16

¹⁵³ Re-examination Day 17 11.11.22

Wingfield has gone wrong in his own assessment (INQ27). As stated above, in particular, Mr Wingfield has made an incorrect assumption regarding the retirement age of the easyJet fleet and has made incorrect assumptions about the fleet mix. These very clearly illustrate where Mr Wingfield has gone wrong, perhaps unsurprisingly because he did not speak to the Airport or the airlines when doing his own analysis. But, in any event, one has to come back to reality of what Mr Wingfield's conclusion are from his exercise. His resulting conclusion is that the contours applied for are too large.¹⁵⁴ Even if that were right (which is not the case), then all that it means is that the Airport is in fact over predicting its own noise impact based on its forecasts and the Airport's actual operations in the coming years will in fact be quieter than those which have been assessed in the ES. That, of course, would be a robust approach. It is impossible to see how Mr Wingfield's points can weigh against this scheme. If the Airport's operations are in fact quieter in the future than have been assessed in the ES (itself showing an imperceptible effect), then there can be no harm.

214. It is a truism that nothing is 'certain' in life. Forecasts can never be certain as was unsurprisingly acknowledged by Mr Thornely-Taylor.¹⁵⁵ But, it is the case (and not disputed by LADACAN) that all airport expansions are assessed and conditioned on the basis of forecasts. Mr Thornely-Taylor confirmed that it is 'always done this way'.¹⁵⁶ No-one has presented evidence to demonstrate that this forecasting exercise is any more uncertain than at any other airport. To the contrary, given the time periods involved and the very limited nature of the expansion in passengers (in contrast to airport expansions involving far greater numbers) the forecasting is necessarily far more certain than for other airport applications.

215. LADACAN have sought to rely on the fact that the forecasting exercise in 2012 did not come to fruition exactly as expected and this somehow means that these forecasts cannot be relied upon. That is simply wrong. Mr Thornely-Taylor and Mr Bashforth

¹⁵⁴ Confirmed orally to the Inspectors

¹⁵⁵ Mr Thornely-Taylor XX by LADACAN Day 13 4.11.22

¹⁵⁶ Mr Thornely-Taylor re-exam Day 13 4.11.22

confirmed that a number of factors relating to these forecasts necessarily are likely to reduce uncertainty experienced in 2012.¹⁵⁷,¹⁵⁸ These are:

- a. The length of time projected forward (9years vs 16 years);
- b. The additional number of mppa (1mppa with only 400,000 on additional flights vs 6.5mppa in issue previously); and
- c. The lack of reliance upon any the need for new aircraft and technology fly in and out of Luton currently, as compared with the situation in 2012 which relied upon the future introduction of neos and maxs where they had yet to be introduced.

216. To this Mr Bashforth added the fact that the trend of modernisation is already occurring.¹⁵⁹ Mr Gurtler confirmed in his evidence how these more modern aircraft are more economic to run. They use less fuel and therefore less carbon. Low cost airlines modernise their fleet a lot quicker than airlines flying trans-Atlantic routes.¹⁶⁰ This accords with the Airport's evidence. INQ62 highlights easyJet's statement to the stock market¹⁶¹ which states makes clear that it is uneconomic to use older aircraft, *inter alia*:

'If instead easyJet sourced aircraft from the secondary market, this may expose easyJet to older technology. easyJet would face greater exposure to fluctuating fuel prices and carbon related taxes and would be competitively disadvantaged relative to the more modern fleets operated by its competitors. In addition, easyJet would be delayed in achieving its sustainability and net zero emissions objectives.'

'Maintain Operational Scale: The new aircraft will be used to replace older aircraft as they reach the end of their useful life. These aircraft will become economically unviable for our high intensity low-cost operation and will need replacement if we are to maintain the current scale of our business.'¹⁶²

217. In addition to this commercial reality for the airlines, it is also wrong to suggest that the permission does not contain any measure to encourage modernisation of the fleet. The

¹⁵⁷ Mr Bashforth in chief Day 17 11.11.22

¹⁵⁸ Mr Thonley-Taylor re-exam Day 13 4.11.22

¹⁵⁹ Cross Examination by LADACAN Day 17 11.11.22

¹⁶⁰ Cross Examination by LADACAN Day 17 11.11.22

¹⁶¹ Itself found at Appendix 7 to INQ27)

¹⁶² INQ62 p.2

draft Carbon Reduction Plan¹⁶³ sets out a commitment for the Airport to ‘Incentivise implementation of more efficient aircraft through contractual agreements’. Further, Mr Gurtler confirmed in his evidence that the Airport’s landing charges include reduced charges for aircraft which operate under chapter 14 of the ICAO rules (the quieter aircraft).¹⁶⁴ There is no suggestion that this will not continue to occur. This measure can be addressed in the final Carbon Reduction Strategy if considered necessary.

218. LADACAN has also referred to rapid growth of the Airport between 2014 and 2019 and a Growth Incentive Scheme which ran for 6 years and ended in 2020. In fact, as the DfT’s own material demonstrates, growth at all airports during that period was 9% greater than expected. We return to what occurred in that period below in relation to the points made about breaches of the noise contour condition. This growth is addressed in Appendix 1 to Mr Bashforth’s rebuttal proof. But the Growth Incentive Scheme ended in 2020 so it is not relevant to the forecasting in issue here¹⁶⁵. It has no effect on this proposal. Further, it is no part of the Applicant’s case (or any other main party’s case) that the proposal requires growth to be held back to meet contours. As can be seen from the annual projections¹⁶⁶ the Airport is projected to reach 18.9 million passengers by 2025.

219. CPRE Hertfordshire has offered no evidence on forecasting. Mr Berry suggested in his proof of evidence that the forecasts were not realistic based on the financial situation of the airlines. But he accepted that he had no evidence to justify this view and refused to answer any questions upon it.¹⁶⁷

220. Appendix 1 (together with ESA4¹⁶⁸) to Mr Hunt’s proof provide detail of the Airport’s forecasts. It goes through the expected modernisation programs of each of the airlines which use the Airport (see paras 22-35). It has clearly set out the expectations for each airline. These are not based upon the Airport’s ‘desires’ or ‘wishes’ but rather on the

¹⁶³ CD4.05 table 4.1 page 17

¹⁶⁴ XX by LADACAN Day 16 10.11.22

¹⁶⁵ Para 17

¹⁶⁶ Table 1 to Appendix 1 Andrew Hunt proof

¹⁶⁷ Day 15 9 November 2022

¹⁶⁸ CD1.16 2.3.5-2.3.11 and Table 8.1B in CD1.17

evidence of the airlines themselves. For example, Wizz Air has published its modernisation program (see appendix 1 of the note). This sets out the aircraft which that airline has ordered. This shows that the majority of the fleet will be made up of the A321 neos with almost full modernisation by 2026/7.¹⁶⁹ Similarly, easyJet has published its fleet orders and expected future fleet size in its financial results.¹⁷⁰ The Airport has taken this information together with the likely retirement dates of aircraft based at the Airport in order to assess the modernisation rate (para 51). The expected fleet mix for the with and without development scenarios can be seen in table 8B1 of ESA4.^{171, 172}

221. No main party has put forward any evidence which realistically gainsays the Airport's own evidence on the forecasts based on this data and evidence from the airlines themselves. As set out in Appendix 1 to Mr Hunt's proof, the Airport regularly undertakes forecasting exercises (para 43) and this forecasting exercise has involved a relatively low level of uncertainty. It sets out the reason for this as follows:

‘...the Airport served 18mppa in 2019. The Application involves the addition of 1 million more passengers per annum (a circa 5.5% increase). The slot system means that it can be confidently predicted that the airlines currently operating slots at the Airport will continue to seek to use those slots so as not to lose them in the future. The relatively small percentage increase in passengers means that the Airport does not expect any major new entrants to the Airport. Rather, it can be confidently predicted that the growth will occur organically based on operations as existed in 2019. This growth will come from some new movements per annum. As explained further below, this is expected to come from aircraft already based at the Airport but which were not used throughout the 2019 calendar year. The remainder of the growth is expected to be the result of aircraft modernisation.’¹⁷³

¹⁶⁹ This same point and evidence is set out in ESA4 – CD1.16 2.3.6 first bullet

¹⁷⁰ easyJet's up to date position is set out in ESA4 CD1.16 second bullet

¹⁷¹ CD1.17

¹⁷² During cross-examination of Mr Bashforth, LADACAN raised a query with regards to why in table 3.1 of his proof of evidence the 2023 figures show the same number of ATMs and passengers but different contour sizes. Mr Bashforth identified the sources for his figures in re-examination. It is unclear what point LADACAN was seeking to make but, it appears that they have failed to recognize that there is a difference in those which are proposed to be flown within the 92 day period and outside of it. The with development scenario shows more flights in the 92 day period for 2028 as is clear from Table 8B1 of ESA4 (CD1.17).

¹⁷³ Appendix 1 Mr Hunt's proof para.45

222. The Airport has forecast that 600,000 of the additional 1mppa will be accommodated within existing movements. This is because aircraft modernisation generally allows for bigger planes which can accommodate more passengers. No main party has challenged this. That leaves only 400,000 which are to be served through additional ATMs. Again, this emphasises the fact that there is a low level of uncertainty with these forecasts.

223. Criticism was made by LADACAN in questions of Mr Holcombe (the Council's noise witness) for the Airport not hiring an 'accredited' forecaster.¹⁷⁴ This is misconceived. First, no such "accreditation" exists. LADACAN appear to be referring to the fact that external consultants, such as York Aviation, can also provide forecasts. But in so doing, they will necessarily be relying upon the information from the Airport and the airlines. The notion of accreditation is meaningless. Mr Hunt's evidence is based on the information from the Airport and airlines in the same way. Second, as Mr Bashforth explained in his evidence that from his experience airports have taken different approaches to forecasting. Some have used external consultants and some use in-house resources. He explained that even where external consultants like York Aviation are used they work with the Airport to work out what is needed as a forecast going forward.¹⁷⁵ In short, there is no one better placed than the Airport to conduct the forecasts.

224. Further, assertions that the Council has not scrutinised the forecasts is not right as is abundantly clear from CD4.09. That document sets out the Airport's response to a number of queries raised by Vernon Cole and David Gurtler on behalf of the Airport on forecasting (pp1.-2, August 2021). Responses to queries on forecasting can also be found at CD4.10 (August 2021) at pp30, 31 and 33.

225. LADACAN's closing submissions at paragraphs 83-89 appear to seek to argue that Appendix 1 of Mr Hunt's proof differs materially from that which is in the ES. That is

¹⁷⁴ Cross examination of Mr Bashforth Day 17 11.11.22

¹⁷⁵ XX by LADACAN day 17 11.11.22

completely incorrect. Table 8B1 of ESA4 sets out, in detail, the forecasts which have been modelled. They include each plane in the with and without development scenario. Appendix 1 to Mr Hunt's proof explains how the forecasts have been arrived at. This isn't new information it is contained within ESA4 at 2.3.5-11. The additional information which the LADACAN seeks to take issue with is that Mr Hunt points out that though the ES has assumed the same rates of modernisation in the baseline and the with development scenario in reality the passenger cap is suppressing modernisation (set out at paragraphs 64-69). That is not an alternative forecast or baseline. It can be noted that LADACAN do not dispute the proposition itself (as is addressed further below). The point they do take goes nowhere as their own witness, Mr Skelton, clearly accepted that the ES had been conducted on a more robust basis because it had not credited the with development scenario with accelerated modernisation.

226. No main party has provided any credible reason why the Airport's forecasts for this Application cannot be relied upon. But, crucially and in any event, the forecasts have been used in order to assess the noise impact and set the noise contours applied for. The Airport is proposing that its permission be constrained by the new condition 10. It has, colloquially speaking, put its money where its mouth is. It will be required to meet those contours (as accepted by Mr Skelton¹⁷⁶). Any concern (evidenced or otherwise) about the forecasts is answered by the terms of condition 10.

Enforcement

227. Another inherently unfair aspect of this application is the misleading narrative that LADACAN has persistently promoted regarding the breaches of condition 10 that occurred in 2017, 2018 and 2019. It is that misleading narrative which is likely to have been the cause of much hostility, rather than the reality of the situation which LADACAN choose not to reflect in their portrayal of events.

228. It is the case that there have been breaches of the current condition 10 in the past (2017, 2018, and 2019). But what LADACAN persistently fail to tell anyone (including in

¹⁷⁶ XX by LLAOL day 15 9.11.22

their evidence to this inquiry) is that: (a) it was the Airport itself through its own retention of expert noise consultants that identified those breaches; this is the consequence of the obviously effective monitoring system that the Airport itself operates under the existing conditions and obligations and will continue to operate; the Airport itself identified the issue; (b) having identified the issue, a proper assessment of the effect of those breaches was carried out – i.e. in accordance with the most basic principles of enforcing planning control both the Airport and the Council scrutinised the effect of those breaches occurring on real people to see if any material harm was occurring; (c) as a result of that conscientious exercise, it was established that **none** of the breaches that did occur did in fact result in a material harm, as the effect of the breaches was an increase in noise levels experience of 1dB L_{Aeq} or below which would have been imperceptible.¹⁷⁷ As such, there was no perceptible harm; (d) but having identified that breaches were occurring, but they were not causing material harm in themselves, the Council required (consistent with national planning practice guidance on the topic) the need for the position to be regularised, so requiring the Airport to make a planning application to address the breach of conditions which is exactly what the Airport did.

229. It is therefore particularly concerning that for an organisation the LADACAN that purports to be performing a “bridge” like function in communicating information to the public and its members that you will find absolutely no reference to this reality; as compared with the misleading narrative that omits any mention of the fact that the effect of the breaches on people has been assessed and has been found to have resulted in no perceptible noise effect and the Council have followed an entirely orthodox, proportionate and lawful approach of responding to the breaches by requiring a planning application to be made to regularise the position.

230. Mr Skelton accepted that no main party has challenged the conclusions of the LPA as the absence of any material harm occurring. Mr Skelton confirmed that LADACAN was not advancing a case on this point.¹⁷⁸ It is one thing not to advance a case challenging

¹⁷⁷ See Holcombe proof pages 24 and 25

¹⁷⁸ XX by LLAOL day 15 9.11.22

the Council's assessment, but it is another thing to criticise the Council for its actions when proper analysis of the evidence demonstrates that the Council has acted entirely appropriately and in accordance with the PPG on enforcement in this case. Indeed, it was a welcome but long overdue concession by Mr Skelton given in oral evidence that in the circumstances that were evidence, it would in fact have been disproportionate for the LPA to have taken other enforcement action.¹⁷⁹ Where has this acknowledgement ever featured in LADACAN's portrayal of events to the inquiry, or importantly in its portrayal of events to the public at large? Mr Skelton further confirmed that in a situation where breaches had been identified by the Airport, there was an assessment of effects the application to regularise the breach which was entirely in accordance with what one would expect under the PPG.¹⁸⁰ At paragraph 74 of its closings LADACAN criticises Mr Bashforth for stating that this was an example of the enforcement regime working well. But, that is exactly the position of LADACAN's own witness.

231. In light of the position of its own professional planning witness, it is surprising that LADACAN spent so much time at this inquiry trawling through the history of the breaches and the Council's decision not to enforce as if there was something to criticise, As Mr Gurtler stated in cross-examination this is a section 73 application and not an enforcement inquiry.¹⁸¹

232. LADACAN's case has also focussed heavily on the fact that the Council owns the Airport. The allegation (whether express or implied) is that this somehow means that there has been less scrutiny of the Airport than there might be with any other development. This allegation is wholly unfounded.

233. First, the Applicant is a private company that operates the Airport. It is not the Council and it is entirely independent from the Council. Second, the Council's ownership of the Airport itself is separate from the Applicant which is an independent operating company operating the Airport under agreement. Third, the Council's land-owning

¹⁷⁹ XX by LLAOL Day 15 9.11.22

¹⁸⁰ XX by LLAOL Day 15 9.11.22

¹⁸¹ XX by LADACAN Day 16 10.11.22

function of the Airport itself is kept separate from its very different function of acting as a “local planning authority”. Fourth, LADACAN’s own witness accepted that the Council’s approach in its capacity as local planning authority to the breaches of condition that had occurred was entirely in accordance with the PPG and it would have been disproportionate to enforce. Fifth, the Applicant currently pays (and will continue to pay) a monitoring fee to the Council under its s106 agreement. The Council has engaged external independent consultants to scrutinise the Airport, including this application. Those consultants have included: Mr Gurtler, Vernon Cole and Suono. This application has been the subject of the utmost independent scrutiny. Far from there being any basis for suggesting any improper or less than exacting process of scrutiny of the Airport, the whole history has been characterised by exactly the opposite. The Airport itself has applied the most exacting monitoring to its own operations, using independent highly regarded noise consultants throughout to monitor its compliance with the conditions year on year. It was the Airport’s operation of these processes that led to the Airport itself identifying the issues that are now being addressed by this application. The Council then scrutinised those breaches and the subsequent planning application. In so doing, the Council itself then employed independent consultants on noise and planning and were rigorous in seeking additional information from the Applicant where required (as can be seen from the Regulation 24 processes).

234. Accordingly, a proper reflection of what has actually occurred in respect of past breaches reveals a very different picture to that which LADACAN has sought to portray. The Airport has never sought to deny, downplay or minimise the fact that breaches of the conditions did occur in the years identified. To the contrary, it identified those breaches itself. But it undertook (correctly) the exercise of assessing what harms resulted: and what should be done about them. It engaged extensively with local planning authority. And it made the planning application to address the breaches as required. This is obviously not what LADACAN has sought to portray as the planning system failing. It is the opposite – the planning system working. Compliance with previously imposed have been rigorously monitored. Where breaches have occurred of those conditions (for the reasons that the Airport has explained in terms of the unexpected events), those breaches have been squarely confronted to understand what material harm occurred (no perceptible harm) and

then what action should then be taken to regularise the position (an application with the comprehensive assessment process that has entailed). LADACAN's mis-portrayal of events, and the unfounded criticisms it has made of the Council are therefore particularly regrettable. Moreover, the Council's decision to approve this application is both consistent with the underlying evidence, but more fundamentally all of the professional independent experts that the Council employed to scrutinise the application independently. The suggestion that it has somehow acted improperly, or without independence, in the performance of its local planning authority functions is without foundation and it does no credit at all to LADACAN to suggest otherwise.

235. Finally, it is in this context that we note that in his proof of evidence Mr Skelton had argued that the contour condition for this application should include financial penalties for any future breaches. This was not a point that he or LADACAN subsequently pursued. In cross-examination he accepted that the TCPA 1990 in fact includes a raft of statutory measures which can be used to address a breach of condition (including enforcement notices, stop notices and breach of condition notices). Breaches of those notices can end up with criminal sanctions and fines. Further, the Secretary of State can serve an enforcement notice and a stop notice. Mr Skelton accepted that in those circumstances, having had his attention drawn to the existing measures that already exist, it was not necessary for a condition to include a penalty regime because the regime to ensure compliance is in the TCPA 1990. This was not pursued by LADACAN in the conditions session. It is also unsurprising in that context to find that no other airport has such financial penalties either, as the imposition of such penalties to enforce other conditions would fail to meet the basic test of necessity, given that the statutory scheme provides its own mechanisms to secure compliance with conditions.

236. Another unfair and incorrect allegation by LADACAN is found at paragraph 68 of their closings. LADACAN states that the noise reduction strategy required by Condition 10 of the 2017 permission remains outstanding. That is simply incorrect. The Council confirmed during the Inquiry that it was submitted in 2019 but has been held in abeyance as a result of this application.

Expertise on Noise

237. Although there was ultimate agreement by Mr Roberts on all of the core points about noise assessment put forward by Mr Thornely-Taylor, it is necessary to draw attention to the considerable caution that needs to be exercised in reading the written proof of evidence of Mr Roberts on some important basic points about noise assessment, as well as his answers in oral evidence. Mr Thornely-Taylor politely but correctly pointed out some basic errors of approach in Mr Roberts' descriptions of a number of the basic building blocks of noise assessment. Mr Roberts accepted that he had been incorrect in basic issues such as the difference between 'pressure' and 'intensity'.¹⁸² His explanation of the L_{Aeq} metric was also wrong and the research that underpins its use in aviation assessment. So too was the description of L_{Amax} . Mr Roberts sought to explain the inaccuracies on the basis that he was writing for a particular 'audience'.¹⁸³ It is not entirely clear why Mr Roberts felt that the Inspectors were not an audience who would or should expect accuracy.

238. As to any residual criticisms of the noise modelling that has been carried out by BAP (acknowledged experts in the field) who were endorsed by Mr Thornely-Taylor and Mr Holcombe, it is important to note that Mr Roberts accepted that he had no experience in air noise modelling.¹⁸⁴ He further accepted that there were a wealth of experts who have considerable expertise and experience in air noise modelling who had provided evidence to the inquiry. These include: Suono (formerly Vernon Cole) who have advised the Council in relation to the Application, BAP who advises the Airport and conducts their noise modelling and Mr Thornely-Taylor.¹⁸⁵

239. Mr Roberts accepted that it was difficult to think of an expert with greater experience than Mr Thornely-Taylor and took no issue with the expertise or professionalism of any of the experts relied upon by the Applicant and the Council.¹⁸⁶ Mr

¹⁸² Accepted by Mr Roberts in XX Day 11 2.11.22

¹⁸³ Accepted by Mr Roberts in XX Day 11 2.11.22

¹⁸⁴ Accepted by Mr Roberts in XX Day 11 2.11.22

¹⁸⁵ Accepted by Mr Roberts in XX Day 11 2.11.22

¹⁸⁶ Accepted by Mr Roberts in XX Day 11 2.11.22

Thornely-Taylor experience and expertise in aviation noise and noise generally is unparalleled (as set out in his evidence).

240. Mr Thornely-Taylor explained that he had worked on projects both with and on the other side from BAP on a number of occasions. He stated that these experiences had led him to have a lot of confidence in BAP. He stated that in the private sector they are the most experienced and competent body that engages in airport noise contours and that he would put them alongside ERCD in doing this.¹⁸⁷

241. The only other witness who gave evidence on noise related matters was Mr Lambourne. But his background is software engineering. He is not an acoustician. In evidence in chief he explained that he makes ‘a nuisance’ of himself ‘by continually suggesting to colleagues who work at the Airport that if we bring best combined resources to bear in understanding the data then we will achieve best results in application’¹⁸⁸. Mr Lambourne may be an enthusiastic amateur, but that is not a proper basis upon which to refuse to accept the expert analysis and modelling of noise that has been carried out on behalf of the Airport and the independent scrutiny it has received by the Council’s own independent experts. His evidence relied upon fishing through data and attempting to perform calculations to fit his theories that the noise model is not robust. However, it became abundantly clear that he lacked the expertise to be conducting those exercises (as is explained below).

Baseline

242. As explained above, LADACAN’s planning witness accepted in cross examination that the baseline used by the Applicant was correct (i.e. the 2017 Permission).¹⁸⁹ However, he was later invited to resile from this in re-examination. As such, it is necessary to address this in some detail.

¹⁸⁷ Mr Thornely-Taylor EiC Day 12 3.11.22

¹⁸⁸ EiC Day 10 1.11.22

¹⁸⁹ XX of Mr Skelton by LLAOL Day 15 9.11. 22

243. It emerged in the LPA's cross-examination of Mr Lambourne that LADACAN's case on the noise baseline was the result of advice received from Mr Roberts as to the correct interpretation of the EIA Regulations¹⁹⁰. Notably, Mr Roberts is a noise consultant and not a lawyer. Mr Roberts' basic error of approach was his fundamental misunderstanding that the 'development' in issue for the purposes of this application was simply that applied for in 2012 and granted in 2014 (rather than the variation that forms the subject of this application). Mr Lambourne gave some further detail as to the nature of LADACAN's error by expressing a view that the Airport was currently operating under the 2014 planning permission but has an alternative set of conditions under the 2017 permission.¹⁹¹ That is wholly wrong. Mr Roberts also insisted, in cross-examination, that a s73 application is not a planning application.¹⁹² If Mr Roberts' contentions were correct on that point, then the EIA Regulations would not even apply to this application.

244. An application for planning permission to carry out development, where that is EIA development, involves an assessment of the significant effects and acceptability of that development as specified in the application and the ES. In EIA cases, this therefore involves identification of what is known as the "Rochdale envelope"¹⁹³ that requires any grant of planning permission to be tied to what has been assessed in the ES. The reason for this is that if you do not tie the grant of planning application to what is assessed in the ES, what you are permitting might have other significant effects which have not been assessed.

245. In granting permission in this way the decision maker is deciding the acceptability of what has been assessed, not the unacceptability of anything beyond that has been assessed. As such, LADACAN's arguments that the 2014 permission set down what was both acceptable and unacceptable are untenable. The 2014 permission did not assess contours beyond those applied for.

¹⁹⁰ XX of Mr Lambourne by LPA Day 12 3.11.22

¹⁹¹ XX by LLAOL Day 12 3.11.22

¹⁹² Accepted by Mr Roberts in XX Day 11 2.11.22

¹⁹³ *R v Rochdale MBC ex parte Milne (No.1) and R v Rochdale MBC ex parte Milne (No.2)*

246. That principle is not only sound in law, but is reflected in the Local Plan policy which contemplates that further expansion can occur at the Airport (indeed, it supports it) subject of course to proper assessment of its environmental impacts and compliance with the conditions.
247. Regulation 3 of the EIA Regulations prohibits the Secretaries of State from ‘granting planning permission or subsequent consent for EIA development unless an EIA has been carried out in respect of that development’ (emphasis added). EIA development is defined in Regulation 2 as meaning ‘development which is either – (a) Schedule 1 development; or (b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location’.
248. Schedule 4 paragraph 3 of the EIA Regulations makes clear that the baseline for any assessment is the current state of the environment and its natural evolution. Where the 2014 and 2017 Planning Permissions have been implemented, the current state of the environment and its natural evolution is obviously the operations permitted by those permissions.
249. In that context, the Airport has already come up against the 18mppa limit and the noise contours much earlier than expected and it has exceeded its existing contours. The obvious and natural thing to do is to apply to allow for those increases, subject to a proper assessment of the effects of changes to the existing position. This could be done either as a section 73 application (to vary conditions because no change in the description of development is required) or it could be done by a fresh planning application. But in either case, the relevant baseline for the purposes of Schedule 4, paragraph 3 is the current state of the environment and its natural evolution represented by the 2017 Planning Permission that is in operation.
250. Mr Roberts accepted that this was in fact the result of applying the words of Schedule 4 paragraph 3 in their natural meaning. But bizarrely, he sought to rely upon the ‘planning portal’ in support of his contention that a different result should apply where

section 73 is concerned and that one should revert to a baseline of 12.4mppa in 2028 (even though the Airport already operates above that level in the current state of the environment). The Planning Portal provides no such result and it would be bizarre if it did and guidance cannot alter the law anyway. The ‘planning portal’ or PPG as in fact being referred to by Mr Roberts does not, in fact, support his position. The PPG identifies that a section 73 application results in a new planning permission. This is obviously right and is why the Airport is currently operating under the 2017 Planning Permission (which was itself the result of a section 73 application). The PPG also identifies that where you make a s73 application, because it results in a new permission, it may itself amount to EIA development. That is the case here. Mr Roberts however, has simply failed to apply paragraph 3 of schedule 4 which makes clear that one starts from the current lawful baseline which is the 2017 Permission and it became clear that, like Mr Skelton, he had simply failed to identify the correct description of the “development” being applied for in this section 73 application.

251. Paragraph 5.2 of Mr Skelton’s rebuttal evidence reflects this error (as he came to accept). The description of development he used is the description of the development first granted in 2014, in order to say that the “no development” baseline is then a baseline without that 2014 development. But of course the error is that the section 73 application is not an application for the 2014 development. It is an application for what was originally granted in 2014 but **with the variation of conditions proposed**. If you omit this basic element of the description of the development you obviously fall into error when trying to identify the baseline “without development”. By contrast, if you identify the development sought in the s.73 application correctly (i.e. an application for what was originally granted in 2014 development and then in 2017 **with the variation of conditions proposed**), you can then readily identify the correct baseline without that development, namely (i.e. what was originally granted in 2014 and then in 2017).

252. Not only is Mr Roberts’ position wrong on the letter of the law it would also present insuperable practical difficulties. If one truly had to assess this application against a

baseline prior to the 2014 Planning Permission then one would somehow have to ignore all of the built development that came with the original 2014 Permission.

253. Further, if it were really correct to apply a pre-2014 baseline then the same would have to be true of all factors to be considered at this inquiry. Notably, the decision-maker would have to credit the Airport with the economic and social benefits of growth from 12.5mppa to 19mppa. It was never credible for LADACAN to argue that a pre-2014 baseline should be taken in relation to noise but a different baseline in relation to economic and social impacts (as promoted by Dr Chapman).

254. In oral evidence Mr Roberts suggested that it was necessary to use a baseline prior to the 2014 Permission because without doing so there was a risk of an applicant continually applying for small changes to a proposal and thereby incrementally increasing its contours inappropriately. He referred to this as “salami slicing” as referenced in Mr Thornely-Taylor’s evidence. But Mr Roberts has confused two different concepts. The identification of a correct baseline (governed by the EIA Regulations) and a different issue of how to deal with the prospect of “salami-slicing” which no-one has suggested is occurring here anyway.

255. The issue of ‘salami slicing’ originates from case law on environmental impact assessment. The concern which arises from those cases relates to an applicant avoiding its obligations under the Environmental Assessment Directive and Regulations altogether by artificially dividing a single project into smaller ones. That concern does not arise here.

256. Mr Thornely-Taylor’s was pointing out that there can sometimes be a suggestion made of subsequent ‘salami slicing’, with a risk of successive incremental increases occurring which are not properly assessed in terms of impact. But again no one has suggested that arises here on this application. Indeed: (1) this is the first application to adjust the noise contours since the 2014 Permission, and so there is no incremental change to take into account; (2) and the change sought is temporary, by 2031 the noise contours will decrease on those which are currently required beyond 2028.

257. Further, as was highlighted in the LPA's cross examination of Mr Lambourne, the 2012 Application projected 156,840 aircraft movements for 18mppa¹⁹⁴. This application forecasts 140,895 movements¹⁹⁵. LADACAN has not factored into its case on the baseline that had the 2012 projections come to fruition the scheme applied for would involve materially fewer ATMs than were projected to occur (and found acceptable) in relation to the 2014 Permission.

258. Ultimately, as accepted by LADACAN's own planning witness, the baseline used by the Applicant is clearly correct. Mr Roberts' evidence against the scheme was dependent upon comparing the scheme with a situation that existed in 2012 and ignoring the 2014 and 2017 permissions. That is an exercise which has no basis in law or logic. Mr Roberts clearly confirmed that if he was wrong about the baseline then he agreed all of the conclusions of Mr Thornely-Taylor.¹⁹⁶ Those conclusions are set out in Mr Thornely-Taylor's proof and include:

- a. the proposal complies with LLP6B(iv), (v), (vi), (vii)¹⁹⁷;
- b. the proposal complies with the NPSE and Government Policy¹⁹⁸;
- c. the mitigation scheme is compliant with and exceeds Government requirements¹⁹⁹;
- d. the perceived change of noise for residents in any properties would be marginal and would not be noticeable²⁰⁰; and
- e. the overall effect of the proposals is to reduce the noise impact of the operation of the Airport and to improve mitigation for surrounding residents²⁰¹

259. Another issue pursued by LADACAN in oral evidence belatedly (but not put to Mr Hunt) was a criticism that the baseline scenario for 18mppa assessed in the ES had used

¹⁹⁴ CD6.02 p192 para 12.2

¹⁹⁵ Table 1 Appendix 1 to Mr Hunt Proof

¹⁹⁶ XX by LLAOL Day 11 2.11.22

¹⁹⁷ Mr Thornely-Taylor proof paras 10.1.1-5, and 12.12

¹⁹⁸ Mr Thornely-Taylor proof RTT para 10.2.1 and 12.12

¹⁹⁹ Mr Thornely-Taylor proof 12.5

²⁰⁰ Mr Thornely-Taylor proof 12.9-10

²⁰¹ Mr Thornely-Taylor proof 12.4

the same rates of modernisation as for the proposed scheme for 19mppa. LADACAN has now sought to question this in light of the point made in Mr Hunt's proof of evidence (at paras 6.51-2 of his proof) and his Appendix 1 that modernisation will be swifter under the proposed scheme. Once again, this is a thoroughly misconceived criticism for the reasons that were accepted by Mr Roberts and Mr Skelton in cross-examination. The ES assessing noise is necessarily addressing a realistic worst case scenario in terms of identifying potential noise effects of an application. It is robust if it does that. Accordingly, when comparing the noise impacts of the scheme (19mppa) as against the baseline (18mppa), it is obviously robust and worst case for these purposes to assume that the same rate of modernisation would occur in the with scheme scenario and in the baseline scenario. It means that one is assuming that the baseline situation would benefit from the same rate of modernisation (with quieter aircraft and a less noisy environment) as would be generated in the with scheme world even if that assumption for the baseline situation is optimistic and less likely to arise. For assessment purposes, it means that one is assuming against oneself that the baseline is quieter than it is likely to be, so that the impacts of noise between the baseline and the scheme are assessed on a worst case basis. The point that Mr Hunt has made reinforces the robustness of the ES assessment. The reality is that fleet modernisation will not occur as quickly in the baseline situation if this scheme is turned down (for the reasons he has explained). If so, the baseline situation will not be as quiet as has been assumed for ES purposes, such that the effect of the scheme's noise increases will be less than has been assumed for assessment purposes. In simple terms, if the ES assumed a slower rate of modernisation in the baseline, then the noise effects attributable to the scheme would be even lower.

260. Accordingly, this further confirms the robustness of the assessment in the ES. It assumes the baseline would benefit from the same rate of modernisation when it is unlikely to do so (for the reasons given by Mr Hunt). If the rate of modernisation in the baseline is in fact lower, the baseline noise will be higher and the noise impacts of the scheme will be even less than is being assessed in the ES. It is as simple as that. LADACAN's criticism is therefore completely misconceived. If the ES were also to reflect the point that is made by Mr Hunt, the noise effects of the scheme would be even lower than those shown.

261. This was yet another point which goes nowhere, as confirmed by Mr Skelton himself who correctly agreed that it was more robust for the ES to have considered the same modernisation rates in the proposed and baseline scenarios.²⁰²

Remaining Points in dispute

Calibration

262. LADACAN has sought to argue that a calibration exercise undertaken in 2015 may have impacted the noise model. This was first articulated in LADACAN's proofs of evidence, but was then responded to by Wood and BAP²⁰³. LADACAN's understanding of what occurred in 2015 was completely mistaken. As explained in document 6.1 the noise model (and so contours presented in the ES) were not based on or calibrated using the 2015 noise measurements from Ludlow Avenue as LADACAN claims. Rather, as explained in Appendix 8C to ESA4²⁰⁴, noise measurements taken from Ludlow Avenue in 2015 suggested at that time that the noise contours produced by the noise model were over-predicting noise in the area. As a result of this, BAP itself sought information at that time from airlines regarding their operational procedures. Easyjet provided information as to its procedures. This information was used to adjust the departure profiles in the INM noise model. The revised profiles produced by the recalibrated model to show profiles being flown by airlines were then checked against the noise results from the Airport's fixed noise monitors. It was found that the modelled results with the revised profiles closely matched the monitoring results, so validating the model.²⁰⁵ Year on year, the results of the noise model in terms of what is predicting and in terms of what noises are recorded to check that the model is correctly predicting reality, which it is. This is an ongoing repeated validation exercise of the model. Despite this clear response, LADACAN has inexplicably persisted with this point. The point is a bad one. And it simply ignores the fact that year on year, the noise model's outputs are verified against actual noise monitoring on the ground. It is

²⁰² XX by LLAOL day 15 9.11.22

²⁰³ Document 6.1

²⁰⁴ CD1.17

²⁰⁵ Document 6.1 para 1.2.15 and 16

impossible to see how any valid criticism can be made of the model given that it is verified year on year in this way.

263. So in pressing this issue, Mr Roberts and Mr Lamborne have completely ignored the fact that BAP validates its model year on year. As Mr Thornely-Taylor explained in his evidence in chief the calibration of the model occurs continually. It is, where necessary, adjusted to take account of what occurs in the real world. He confirmed that calibration exercises occur at least annually and that this includes an annual review of profiles.²⁰⁶

264. Mr Roberts accepted that it was best practice to adjust the model to reflect how aircraft fly and then to check whether these occur with the monitor.²⁰⁷ That is exactly what occurred in 2015. Mr Roberts further accepted that the calibration exercise takes account of data across a year and that taking a year's data is 'much more robust' than data from two weeks in March.²⁰⁸

265. On being asked whether the Ludlow Avenue monitoring results in 2015 and subsequent checking caused concern Mr Thornely-Taylor explained that it was quite the opposite. It was a good illustration of looking at the output of the noise monitors and updating the calibration of the model which improves results. He confirmed that if aircraft changed the way they behaved then that would, through that process, be picked up in the model.²⁰⁹

266. LADACAN also attempted to draw conclusions from comparing readings of the 'loudness' of the A320 from a variety of sources to undermine the calibration exercise.²¹⁰ The problem with this is immediately obvious. Readings of an aircraft taken at different locations on different days are simply not comparable. The same problem occurred in INQ51 where LADACAN sought to compare locations used to measure non-residential

²⁰⁶ Mr Thornely-Taylor XX by LADACAN Day 13 4.11.22

²⁰⁷ Accepted by Mr Roberts in XX Day 11 2.11.22

²⁰⁸ Accepted by Mr Roberts in XX Day 11 2.11.22

²⁰⁹ Mr Thornely-Taylor EiC Day 13 4.11.22

²¹⁰ For example, Mr Roberts pointed in EiC day 10 1.11.22 to IQ50 Community Noise Report South Luton 2017, page 7

receptors in the ES with locations used for community noise monitoring. Different locations will yield different results. These were from different locations. Mr Roberts accepted that the different results shown in Table 1 of his rebuttal were not surprising indeed, they would be expected involving different times of year and meteorological conditions.²¹¹

267. LADACAN sought to allege (by reference to INQ44 p7) that it was possible that there had been an operational change to the way in which the 737-800 is flown in 2019.²¹² The extent of this point appeared to be a suggestion from Mr Lambourne that ‘it would be worth taking a rain check on whether anyone has changed anything’. Again, this statement misses the fact that the model goes through an annual validation exercise and also an annual profile check. ‘Checks’ are taken regularly and operational changes are reflected in the model as necessary. The model is properly reflecting reality and no one has produced any evidence to the contrary.

268. Paragraph 4 of Annex A to LADACAN’s closings state that Mr Thorneley-Taylor agrees that there was some deficiency in BAP’s checking of aircraft types. That is incorrect.

269. Finally on this point, even if LADACAN had been correct with regards to its assessment of the 2015 calibration exercise it is also clear that this point goes nowhere. Mr Roberts accepted that even if the Ludlow Avenue point were correct it could not have an impact upon the assessment of the difference between 18mppa and 19mppa as the change in noise would not be affected.²¹³ Paragraph 7 of LADACAN’s closings refuses to accept its own witness’ evidence on this point.

NMT3

270. The newest effort in LADACAN’s dogged attempts to find fault where none exists comes from the exercise that Mr Lambourne carried out during the inquiry (without informing the parties beforehand) to make an assertion that NMT03 regularly records

²¹¹ Accepted by Mr Roberts in XX Day 11 2.11.22

²¹² Mr Lambourne EiC Day 10.1.11.22

²¹³ Accepted by Mr Roberts in XX Day 11 2.11.22

higher noise readings than it should. As already noted above, even if LADACAN were correct in this contention, then as Mr Roberts confirmed, the result would be that the model is over-predicting the Airport's noise impact (not under-predicting it) and the noise impact of the scheme reported in the ES would, in fact be lower not higher. In any event, the point is a bad one.

271. When asked to discuss INQ44 (the 'twelve pager' as LADACAN termed it), Mr Roberts stated that the diagram on page 4 was included because LADACAN 'felt' that including NM3 in the monitoring process was 'perhaps not the best idea' due to its proximity to the M1 and the fact that LADACAN 'felt' it was 'a little too far from the aircraft anyway'. Mr Roberts explained that he had no expertise in the modelling of air noise from airports. Similarly Mr Lambourne confirmed he had no qualifications relevant to this issue.

272. Mr Roberts claimed that the results which were included in tables 5.3 and 5.4 of INQ44 showed that NMT3 was consistently recording higher results.²¹⁴ In response to a question from Inspector Holden, Mr Roberts suggested that it was due to the fact that it was close to the motorway and affected by road noise.²¹⁵ As pointed out by Mr Thornely-Taylor that was simply wrong. Even taken at face value, Mr Lambourne's table showed that for some aircraft the highest L_{Amax} readings were at NMT3 and for others they were higher at NMT2. With that in mind it is very difficult to understand what LADACAN's point was in reality.

273. The assertion being made by LADACAN was that NMT3's results were disproportionately high given its relative distance from aircraft (see page 4 (INQ44)). But Mr Lambourne and Mr Roberts' assessment of the diagram on page 4 of INQ44 ignored a number of factors which will influence which monitor reads higher results in relation to

²¹⁴ EIC Day 10, 1.11.22

²¹⁵ During EiC Day 10, 1.11.22

any given flight. Distance is not the only variable. It includes wind, other meteorological conditions, vortices and banking.²¹⁶

274. Under cross examination Mr Roberts stated that airplanes would be banking between NMT2 and NMT3.²¹⁷ He was invited to reverse this in re-examination by reference to the flight tracks shown at INQ44. However, as Mr Thornely-Taylor explained in chief²¹⁸ the data to arrive at page 4 of INQ44 had been taken from an app called Flightradar24. This uses signals from transponders in aircraft which is less accurate than the Airport's own radar system (TRAVIS). The AMRs contain more accurate track data. The 2019 AMR²¹⁹ shows that many aircraft are indeed banking between NMT02 and NMT03. When banking the aircraft requires more thrust and the positioning of the airframe has an effect on noise propagation and one would expect there to be differences between the readings at NMT02 and NMT03.²²⁰ In cross examination Mr Thornely-Taylor confirmed that the effect of banking would be expected to lead to louder results at NMT03.²²¹ Mr Thornely-Taylor also explained that wind has an impact which modifies the symmetry of noise propagation.

275. Mr Lambourne and Mr Roberts also failed to take into account the fact that an airplane flies in three dimensions. The plan at page 4 assumes that the reading of the monitors is taken at exactly the point at which it is perpendicular to both monitors. However, as appeared to be agreed by Mr Lambourne²²², an aircraft is pinged by radar every six seconds. Therefore any given reading may not be taken where the airplane is situated perpendicular to the monitors. Thus the exercise undertaken by Mr Lambourne was very crude. It is simply wrong to conclude that merely because an airplane is further from a monitor the reading should be quieter. A number of variables come into play.

²¹⁶ As explained by Mr Thornely-Taylor in evidence in chief Day 12 3.11.22 and accepted by Mr Roberts in XX Day 11 2.11.22

²¹⁷ Accepted by Mr Roberts in XX Day 11 2.11.22

²¹⁸ Mr Thornely-Taylor EiC Day 13 4.11.22

²¹⁹ CD8.26 page 24

²²⁰ Mr Thornely-Taylor EiC Day 13 4.11.22

²²¹ Mr Thornely-Taylor XX by LADACAN Day 13 4.11.22

²²² EiC Day 10 1.11.22

276. Mr Thornely-Taylor also explained that LADACAN's concern appeared to be that NMT03 was faulty in that it was alleged to be consistently reading higher results. However, in practice that simply isn't something which happens. If it were faulty there would be no signal at all or totally incorrect numbers being registered. Mr Thornely-Taylor stated he had never come across any monitor which consistently recorded the wrong readings and therefore he considered that the numbers can be taken as being valid.²²³ The motorway will have an effect in the way the duration of noise is measured. However, this does not impact the noise model.²²⁴

277. Mr Roberts further argued in evidence in chief²²⁵ that 'most aircraft' at NMT3 were below an angle of elevation of 38.5 and that this meant that there would be attenuation below that level.²²⁶ However, in almost the same breath in chief Mr Roberts acknowledged that the angles were typically 39-40. Indeed, none of the elevation angles calculated and presented by LADACAN fell at or below 48.5. When this was highlighted in cross-examination Mr Roberts accepted that there would be no lateral attenuation of noise and agreed that his evidence in chief might have been misleading and he wasn't suggesting that there would be attenuation as a result of the angle of elevation but rather it related to increased distances.²²⁷ This however, then ignores all the other factors at work.

278. Mr Roberts accepted that BAP has been carrying out noise modelling since 2012 and are well aware of the locations of the monitors.²²⁸ He also accepted that BAP applies a correction factor to NMT03 due to its proximity of the motorway and that BAP are expert and experienced in verifying the accuracy of noise monitors and checking their validity.²²⁹ Both Mr Thornely-Taylor and Mr Holcombe made clear that they held BAP in the highest regard as experts in their field. It is simply inconceivable that if there was an issue with the accuracy of readings from NMT03 that they would not know about it.

²²³ Mr Thornely-Taylor EiC Day 13 4.11.22

²²⁴ Mr Thornely-Taylor EiC Day 13 4.11.22

²²⁵ Day 10 1.11.22

²²⁶ Based on figure 10 of INQ42, CAP1498

²²⁷ Accepted by Mr Roberts in XX Day 11 2.11.22

²²⁸ Accepted by Mr Roberts in XX Day 11 2.11.22

²²⁹ Accepted by Mr Roberts in XX Day 11 2.11.22

279. Finally, this point goes nowhere for two basic reasons: (1) as stated above, even if LADACAN's point with regards to NMT03 was correct then the only conclusion must be that the noise modelling and noise readings are over-predicting aircraft noise and the airport is in fact quieter than is being modelled;²³⁰ and (2) if there is any issue with NMT03 and its reading, it makes no difference at all to the assessment of the noise impact difference of the baseline 18mppa and the scheme of 19mppa. Both use the same data and any correction for NMT03 would apply to both, so that the noise impact difference would be the same.

The Environmental Impact Assessment – Gatwick and Heathrow

280. In his written evidence, Mr Roberts had sought to criticise the ES for not following the same format as that carried in relation to new runways at Heathrow and Gatwick.²³¹ However, those proposals are for far more significant applications which also involve airspace changes. And the criticism was misguided because the same information for such assessments has been provided in the ES (for example N-contours etc, numbers of dwellings). As Mr Thornely-Taylor highlighted and Mr Roberts accepted, applying exactly those methodologies set out in the Gatwick and Heathrow documents, the same negligible conclusion would be reached. Under either methodology a change of less than 1dB is 'negligible' and 'not significant' in EIA terms regardless of the number of properties or the number of people affected.²³² Mr Roberts' criticism therefore fell away as he confirmed that applying those methodologies the same conclusion of negligible impacts and effects applies.

The Assessment – Secondary Metrics

281. Mr Roberts initially alleged that the ES had not used secondary metrics in the assessment of noise. This was obviously wrong. He then sought to suggest in cross

²³⁰ Accepted by Mr Roberts in XX Day 11 2.11.22 and stated by RTT in chief EiC Day 13 4.11.22

²³¹ Methodologies appended to Mr Roberts' rebuttal proof

²³² See graphic 17.11 and table 17.15 in the Heathrow methodology and 14.4.88 in the Gatwick methodology (both appendix 1 to Mr Roberts Rebuttal). As confirmed by Mr Thornely-Taylor in EiC and accepted by Mr Roberts in XX Day 11 2.11.22)

examination that the problem was not that the ES hadn't included secondary metrics but he criticised the fact there were no 'assessment criteria'.²³³ Mr Roberts initially relied upon the Gatwick and Heathrow documents as being 'best practice' and as including these criteria²³⁴ but, under further cross examination he couldn't find anywhere in those documents where they set criteria or thresholds for judging N-contours or L_{Amax} either²³⁵ Off the cuff, Mr Roberts offered his own criteria of significance for N-contours. He stated that a 'doubling' would be significant'. He couldn't give any basis for his statement.²³⁶

282. But again this criticism goes nowhere given Mr Roberts accepted that if the applicant's baseline was correct then Mr Roberts was not challenging any of the conclusions of Mr Thornely-Taylor including those which relate to the other metrics²³⁷ He further confirmed that LADACAN was not alleging any significant impact as a result of considering the L_{Amax} or N-contours.²³⁸ He was right to make that concession as addressed below.

283. In his evidence in chief Mr Thornely-Taylor addressed the mistaken criticisms of the L_{Aeq} metric that Mr Roberts had advanced. He explained how it is incorrect to simply see the L_{Aeq} as an average of sound intensity. Rather, the L_{Aeq} is strongly driven by short term events at a high level. It is an index which is sensitive to high noise events within the period of the time it is measuring.²³⁹ Mr Thornely-Taylor went on to explain that any noise reading is meaningless unless one understands the relationship between the occurrence of noise, the varying levels of the index and the response of populations. This is the subject of extensive scientific research which has led to the consensus on the importance and validity of the L_{Aeq} as a metric for assessing the impacts of aviation noise.

²³³ Accepted by Mr Roberts in XX Day 11 2.11.22

²³⁴ Accepted by Mr Roberts in XX Day 11 2.11.22

²³⁵ Accepted by Mr Roberts in XX Day 11 2.11.22

²³⁶ Accepted by Mr Roberts in XX Day 11 2.11.22

²³⁷ Accepted by Mr Roberts in XX Day 11 2.11.22

²³⁸ Accepted by Mr Roberts in XX Day 11 2.11.22

²³⁹ Mr Thornely-Taylor EiC Day 12 3.11.22

284. In his rebuttal proof Mr Thornely-Taylor set out a number of studies which correlate L_{Aeq} with annoyance and sleep disturbance.²⁴⁰ Mr Holcombe indicated his agreement with this during cross examination. He emphasised that the relevant guidance all considers the L_{Aeq} . Whilst no one argues that aircraft aren't perceived as individual events the issue is with drawing equivalence to annoyance and sleep disturbance. Mr Holcombe was clear that one could not look at individual events (and L_{Amax}) to do that but the metric does allow one to assess the impact is L_{Aeq} .²⁴¹ The L_{Aeq} is an entirely valid metric to use and has been repeatedly used to consider the effects of aircraft noise for all the reasons given by Mr Thornely-Taylor.

285. Mr Thornely-Taylor also explained that consistent with the guidance, the Applicant has not solely considered the L_{Aeq} metric anyway, but also produce N contours. He pointed out that the N contour system only just works at Luton because the number of movements is right on the edge of triggering the values that are plotted. He explained that although one could see some change in the N60 night time contours²⁴² they have been generated overlaying both easterly and westerly operations. Whilst it is not theoretically impossible that the wind changes during the night at just the right time to get such an overlap, in fact for most nights all movements will either be easterly or westerly so the overlay shown would not actually be experienced by individuals in that way. Mr Thornely-Taylor explained that without the overlay there would be no N-25 contours at all as, taking a single mode, there are no cases of more than 25 movements in a night.²⁴³ Mr Thornely-Taylor explained that nice though it is to have an index which is perceived as being simpler, there isn't really enough aircraft noise activity for the N contour system to have application at Luton and is on the verge of breaking down as, a relevant metric. Unless the Airport is operating both westerlies and easterlies in one night there would be no N65-25 contour at all. Looking simply at the numbers of movements Mr Thornely-Taylor explained that the westerly arrivals are projected to increase from 21 to 24 and westerly departures from 16 to 18 per night. No witness to the Inquiry stated that the N metrics were showing a

²⁴⁰ Paragraph 2.12

²⁴¹ Mr Holcombe XX by LADACAN Day 14 4.11.22

²⁴² ESA4 Figures 6.20, 6.22, 6.24, 6.26

²⁴³ Mr Thornely-Taylor EiC Day 12 3.11.22, explaining Appendix 8E to ESA4 CD1.17

significant effect. Mr Thornely-Taylor stated that was unsurprising.²⁴⁴ As noted above, Mr Roberts agreed that he was not suggesting any significant effect by reference to any other metric.

Neos vs Ceos

286. LADACAN sought to raise a concern that in practice neo versions of aircraft are not as quiet as their certification levels indicate. Mr Thornely-Taylor explained that in practice much of the noise level of an aircraft depends not on its engine level but on matters such as when the landing gear is deployed and the flaps are down.²⁴⁵ Paragraph 52 of LADACAN's closing submissions allege that the contours are under-predicted as a result of this. That is simply not the case. Importantly, and as confirmed in a question from Inspector Underwood, the differences in noise level are accounted for in the model because the model is based upon readings of actual ATMs at Luton²⁴⁶. All of the aircraft in the model are already being flown at Luton Airport. Further, as Mr Thornely-Taylor also explained the main effect on the contours is from departure noise. This is where the benefits have been seen between the neos and the ceos. This is further explained by reference to the A321neo in INQ55 p.1-2.

Conditions

287. In response to a question from Inspector Clegg, Mr Thornely-Taylor explained why the noise contour condition is set using a contour 57dB, whereas LOAEL is now considered to be 51dB and this LOAEL has been used in the ES assessment.²⁴⁷ Mr Thornely-Taylor and Mr Holcombe explained the difference between the two. The noise contour in a condition is simply a reference contour point against which the noise being generated can be checked. It is not being used as a LOAEL level for assessment purposes. It is simply being used as a control. You could use any level as such a control in principle, provided you then also took the relevant contour area affected by that noise level. So you could use

²⁴⁴ Mr Thornely-Taylor EiC Day 12 3.11.22

²⁴⁵ Mr Thornely-Taylor EiC Day 13 4.11.22

²⁴⁶ Response to Inspector question Day 13 4.11.22

²⁴⁷ Questions from Inspectors Day 13 4.11.22

60dB as a control point in a condition, using the smaller sqkm area for that noise level, or 51dB using the larger sqkm area for that noise level.

288. Whilst there is a superficial attraction in setting the control contour at 51dB (simply because it is the same number used in the assessment for the LOAEL), this would make no practical difference in terms of the noise being generated and controlled as you would then have to use the larger sqkm referable to that noise in the modelling, showing a larger contour area on the map. And the larger the area one shows, the more uncertain. The uncertainty arises because the 51dB contour extends further out to an area which diverge more from the SIDs and it is therefore more difficult to get an accurate representation further away. The reason why there is no difference is because the contours follow each other. If the tighter contour is controlled then the wider contours will also be controlled as a result.²⁴⁸

289. During cross examination of Mr Holcombe Mr Wald put a number of questions which appeared to raise an underlying concern (not addressed by any of LADACAN's witnesses) that weather patterns and meteorology has an impact on the contours and therefore this gives rise to uncertainty as to whether the conditions can be achieved. This has been accounted for in the NAP which provides (at para 6.1.7) that for the purpose of assessing compliance with the contour area limits in condition the modal split used shall be 78% westerly and 22% easterly.

290. During the conditions session the Council were asked to confirm the reason for Condition 8 on the planning permission. Mr Gurtler replied that the condition was primarily about surface access. However, he stated that it may be that additional ATMs may cause some additional noise. It is clear that condition 8 is concerned with surface access and not noise. One can test it in this way, if one were able to fly 19mppa within the noise contours

²⁴⁸ During the Inquiry the Inspectors mooted a condition which would fix the proposed area of the 57dB contour at 51dB. The Applicant expressed unease with regards to this proposal as it was concerned that the Panel had not appreciated the consequences of such a measure. This would result in any permission being fundamentally different to that which had been applied for as such a measure would limit the throughput to well below that in 2012, c.5mppa. The Applicant offered to call further evidence to demonstrate this point but the Panel decided this was unnecessary and withdrew its suggested condition.

(and the other noise conditions) then there would be no reason for the condition beyond surface access considerations.

291. LADACAN has suggested a proposed change to condition 10 with five ‘proposals’ as set out in its ‘discussion paper on Conditions’ (15.11.22). The first of these proposals has already been suggested by the Applicant and the Council. It is proposed that the permission should not be implemented prior to provision of strategy which defines the methods to be used by the Applicant to reduce the area of the noise contours. The remainder of LADACAN’s suggestions are unnecessary. The contours set out the clear milestones which must be achieved under the permission, there is no need for any additional milestones, whether annual or otherwise. If the applicant breaches its conditions then it risks any of the suite of enforcement measures which are open to the Council.

292. LADACAN’s suggestion of a ‘suitably qualified independent expert’ to agree the strategy is superfluous. The review of the strategy is a matter for the Council. The same is true of the suggestion for an expert review of the model. The model has been prepared and is administered by independent expert consultants, no one has called their expertise or independence into question. Further, Mr Roberts (acting on behalf of the Council) has been satisfied by the information which he has been provided in terms of the model and has not agreed with any of the criticisms raised by LADACAN. In those circumstances the review suggested by Mr Lambourne is wholly unnecessary.

Mitigation strategy and noise benefits of the scheme

293. In cross examination Mr Roberts confirmed that he did not contradict any of the identified benefits of the enhanced noise mitigation scheme which forms part of the proposals and which had been explained by Mr Thornely-Taylor. No challenge was made to that part of Mr Thornely-Taylor’s evidence. Mr Roberts has also confirmed that where noise levels are above the SOAEL then policy itself allows for mitigation including in the form of noise insulation schemes.²⁴⁹

²⁴⁹ Day 11 2.11.22

294. The benefits of what is on offer from this application in terms of noise insulation have been persistently and inappropriately ignored by LADACAN in their assessments and portrayal of this application, to the detriment of the people who stand to gain a significant advantage in terms of noise from the changes to the scheme if his application is approved.

295. The existing noise insulation scheme has an annual capped fund of £100,000 per year (index linked) with a per property fund of £3000 (index-linked). As set out at table 9.4 of the SoCG this means that under the current permission noise insulation for all affected eligible properties (approximately 1,100) would take 33 years to complete with a fund of approximately £3.5m with the current update of the scheme and at best deployment could take 16 years.²⁵⁰ Further, it is based upon current contours. If a property falls within the relevant contour and then later falls outside of it (as the noise contours shrink in time as they are required to do), that property cannot then claim insulation.

296. Under the new scheme a fund of £4,500 (index linked) per property is proposed within uncapped annual fund. The new fund is proposed to ensure that all properties meeting the relevant criteria can be insulated within 5 years.²⁵¹ 2023 is the year which is forecast to have the largest SOAEL contour. It is forecast that 322 additional properties will fall into the night time SOAEL contour albeit the increase in noise will be imperceptible. Mr Holcombe was therefore right to identify the benefits of this scheme. Persons currently affected by noise levels just under 63dB under existing conditions are not eligible for noise insulation and will never be so under the existing position. But in consequence of an imperceptible increase in the noise arising from this scheme, they will become eligible for noise insulation in their property which eligibility will continue for 5 years (even if their property subsequently falls below 63dB) with all the attendant benefits that brings for internal noise conditions. The mitigation scheme will fix eligibility based on this contour for five years. Therefore, unlike the current scheme, eligibility would not

²⁵⁰ RTT proof 9.1.8

²⁵¹ SoCG table 9.4

change each year but would be based on the 2023 contour which allows everyone affected by the worst case year to be eligible for insulation in future years.

297. Mr Bashforth reported in his oral evidence that there were a series of reports which indicated that the mitigation achieves a 10dB to 20dB reduction. The reports are not before the Inquiry, but no main party has ever taken a point in its written evidence with regards to the specifications.²⁵² During cross examination of Mr Thornely-Taylor LADACAN referenced CD8.46 which indicated that in 2017 testing of four properties had shown a reduction of 2-15dB. Mr Thornely-Taylor noted that 2dB was surprising and indicated that it may be that the installation in that property may have been incorrect or the mitigation did not cover all parts of the building. But on those figures alone, it can be seen that even the lowest improvement is reversing the highest impact of the proposal (less than 1dB) by more than double (i.e. at the very lowest 2dB) and clearly in most cases the benefit is far far higher.

298. Mr Thornely-Taylor therefore explained that one of the big benefits of approving this scheme was the greatly enhanced noise insulation scheme.²⁵³ Mr Roberts also considered that the Application's insulation scheme would be 'significantly' expanded beyond what exists currently he also expressed the view that this would also benefit those who are currently living within the SOAEL as they may gain insulation faster than they would if the application were not to be approved.²⁵⁴ Mr Gurtler agreed that the 'enhanced Noise Insulation Scheme would be a significant improvement on the current situation'.²⁵⁵

299. Under cross-examination Mr Gurtler summarised the position which is that the noise insulation 'proposal which is on the table is massive betterment. People who fall in 2023 into the SOAEL because of a 1dB increase which they won't notice are then entitled for 5 years to have improvements to the insulation of their property which not only covers aircraft but can also cover road noise.'

²⁵² In response to an Inspector question after reading these closings, Ms Hutton confirmed that the Appellant was still relying upon Mr Bashforth's evidence.

²⁵³ XX by LADACAN day 11 4.11.22

²⁵⁴ Mr Roberts proof 6.1 and 6.8

²⁵⁵ Mr Gurtler 6.5

Noise Conclusion

300. Overall this is a proposal which complies with all relevant local and national policies. With regards to the relevant criteria in LLP6²⁵⁶ the proposal has:

- a. Fully assessed the impacts of any increase in movements (criterion iv). Although that criterion provides that mitigation only need be identified in the event that significant adverse effects are identified, the application has gone over and above to provide an enhanced mitigation package even where the noise impacts are imperceptible;
- b. In line with criterion (v) the proposal achieves further noise reduction through the ultimate shrinking of the daytime contour in 2031 and through the provision of the noise mitigation, it also results in no material increase in day or night time noise and does not give rise to any excessive noise. Further, it is in full compliance with the Noise Action Plan which, itself expressly recognises that the impact of proposals for further expansion should be addressed through the planning process²⁵⁷;
- c. Includes an effective noise control, monitoring and managing scheme through the Noise Management Plan controlled by the s106; and
- d. Includes proposals which 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. It does this through the stepped contours which reduce over the period up until 2031 and also through the enhanced mitigation scheme.

²⁵⁶ CD9.07

²⁵⁷ CD13.11, Section 5 table (item 5.3 and footnote) and summary of consultation responses on penultimate page.

Impact on the Countryside and AONB

301. The ES considered the potential for the proposal to impact on the AONB (both landscape and visual and noise)²⁵⁸. As highlighted there, all aircraft would pass above 4000 feet, a height at which effects are deemed to be insignificant.
302. The scheme does not propose any change in flight height or flight paths. No new areas will be overflowed as a result of the proposals.
303. As explained by Mr Bashforth in his evidence in chief²⁵⁹ aircraft from Luton Airport do not fly over the AONB in Luton Borough. However, he did not limit his assessment of the AONB to simply those areas but also included the Chilterns AONB elsewhere.
304. Mr Thornely-Taylor confirmed in his evidence in chief that any noise impact would be negligible (as with the impact upon residential receptors). Questions were put to him in cross-examination which related to the Department for Transport Air Navigation Guidance 2017²⁶⁰ however, Mr Berry who appeared on behalf of the CPRE **Hertfordshire**, confirmed that he was not relying upon that document. **Given this answer it is surprising that CPRE Hertfordshire is relying upon it at paragraph 12 of its closing submissions.**
305. In any event, it can be seen that the Air Navigation Guidance document applies to changes in airspace.²⁶¹ It states that it is desirable that airspace routes which fly below 7,000 feet should seek to avoid flying over the AONB. However, that is not a matter for this Application which cannot and will not make any amendments to airspace. Further, it makes clear in any event that ‘Given the finite amount of airspace available, it will not always be possible to avoid overflying National Parks or AONBs, and there are no legislative requirements to do so as this would be impractical.’²⁶²

²⁵⁸ ESA2 CD1.09 paras 4.4.23-26

²⁵⁹ Day 17 11.11.22

²⁶⁰ CD8.02

²⁶¹ See introduction

²⁶² Para 4.16

306. Mr Berry appeared at the Inquiry on behalf of CPRE Hertfordshire and his proof made a number of allegations which he could not support under cross-examination. For example, paragraph 20 of Mr Berry's proof stated that the application will 'result in aircraft flying over communities that have previously enjoyed relative tranquillity...'. Under cross-examination Mr Berry could not list any area which met this description. Indeed, there are none.

307. Mr Berry alleged at paragraph 23 of his proof that 'the A321 NEO aircraft have caused more noise than the widely used A321CEO' under cross-examination he could not defend that statement and stated he was happy to accept the figures in INQ-55 which show that is incorrect.

308. Under cross-examination Mr Berry couldn't defend or give specifics as to why any of the policies listed in his proof were contravened by the Application. Ultimately, Mr Berry agreed that if the noise evidence was accepted and any impact would be negligible and imperceptible then there would not be a breach of the various policies which he addressed in his proof.²⁶³

309. Given the fact that all of the noise experts at this Inquiry agree that a less than 1dB LAeq would be negligible and imperceptible and given that this is the maximum impact which will be experienced in the worst year and the fact that any impact will be temporary it is clear that there is no breach of policies which relate to the AONB and the countryside including LLP29 and paragraphs 174, 176, 185 NPPF. No harm to the AONB will arise and the AONB is consequently protected.

Socio economics

Introduction

310. LADACAN's Statement of Case did not criticise the economic or social benefits of the Application identified in the supporting application documents (such as in the Planning

²⁶³ XX by LLAOL day 15 9 November 2022

Statement). Despite this they called evidence from Dr Chapman which sought to question the clear economic and social benefits of the Application and presented an objection in contradiction of Government policy that supports aviation growth and the economic benefits it brings. Dr Chapman was in fact repeating arguments against Government policy which have been consistently rejected by previous decision makers in relation to airport expansions (see e.g. Bristol Airport and the Stansted Airport appeals). As set out above, Dr Chapman works for an organisation which actively campaigns to stop airport expansion in contradiction of Government policy and seeks a change in Government policy.²⁶⁴

Policy Context

311. The Local Plan²⁶⁵ is explicit in its strong support for Economic Growth and the provision of jobs. The title of the Local Plan is ‘Planning and Economic Growth Place and Infrastructure’. The foreword states:

‘New jobs have a high priority and the local plan includes proposals for significant growth on key strategic sites - including growth around London Luton Airport - which will help safeguard Luton's traditional role as an important sub-regional employment centre.’²⁶⁶

312. Other key paragraphs state:

‘2.12 There are only four significant employment land allocations left within the town (Power Court, Century Park, Butterfield Green and Land South of Stockwood Park) to maintain Luton’s economic contribution to itself and its neighbours, for businesses wishing to invest into the area or for firms wishing to expand. These sites (one regeneration site and two greenfield sites respectively) require key enabling infrastructure. There is, however, a significant economic growth multiplier for Luton and the wider sub-region, provided by the busy and growing London Luton Airport, which provides a range of aviation-related skilled engineering and technical employment and also lower skilled work related to aviation and business services. There will be a need to ensure that aviation and other related growth arising from the proximity to the airport or related business clusters are not held back by land and infrastructure constraints. To achieve this, a strategic allocation comprising London Luton Airport, Century Park and Wigmore Valley Park, is proposed in the Local Plan.’

²⁶⁴ Accepted in XX day 6 5.11.22

²⁶⁵ CD 9.07

²⁶⁶ Page iii

‘2.18 Given the above unique circumstances, as evidenced by technical studies and analysis, the development strategy must ensure that Luton continues to successfully grow its economy as a sub-regional employer benefiting the town and its neighbours and use its space efficiently and effectively whilst looking to its neighbouring authorities to contribute quality and affordable housing and mixed communities accessible to the town. This will ensure that the benefits of economic drivers, including Capability Green business park, London Luton Airport...’

‘3.5 - London Luton Airport will be improved to provide more jobs related to aviation industries and other associated business clusters and maintain London Luton Airport's key role as a sub-regional economic driver bringing wealth and job creation (including high skilled jobs) to the town and neighbouring local authorities.’ (emphasis added)

313. One of the strategic objectives of the Local Plan is to: ‘Retain and enhance Luton’s important sub-regional role as a place for economic growth and opportunity including the safeguarding of London Luton Airport’s existing operations and to support its sustainable growth over the Plan period based on its strategic importance’

314. The explanatory text for LLP 6 states at 4.45:

‘London Luton Airport is a busy, growing airport currently operating at around 10 million passengers per annum with a capacity to manage up to 12.4mppa, and with the planning consent 12/01400/FUL allowing the airport to grow to an operating capacity of 18mppa. This is supported by Policy LLP6, which includes criteria to allow additional proposals to be considered in accordance with the most up-to-date Master Plan (i.e. that Master Plan which is applicable at the time of determining any planning application). The airport provides infrastructure and services for commercial and business-related aviation (in 2012 nearly 17% of airport passenger was for business travel) as well as air cargo/freight and generates significant employment for residents of the town and surrounding areas. This includes aviation-related engineering and services and other aviation-related jobs. The airport also provides and underpins employment for a pool of workers and businesses that use and rely on the airport from neighbouring local authorities' areas, in particular Bedfordshire, Hertfordshire and Buckinghamshire.’

315. Dr Chapman accepted that: (1) the Airport is a major source of employment in the borough, (2) the Airport is singled out as a strategic allocation for employment, and (3) the

local plan explicitly identifies that jobs provided at Luton will benefit Luton and neighbouring local authorities.²⁶⁷

316. In a question to Dr Gurtler, Inspector Holden asked whether the borough was over-dependent upon the Airport.²⁶⁸ But the adopted development plan is clear in its support for the Airport and its growth and this symbiotic relationship forms a central part of the development plan strategy. Again, the merits of those policies, formed through the development plan process, is not a matter for debate here. But, in any event, Mr Gurtler pointed out that ‘when you have got a major asset and major employer that stimulates growth you want to work with that’. He went on to explain that the ‘Airport is a key pull to Luton’ and that the Airport is a ‘big driver to bring other businesses to the area’. He gave an example of two Bollywood companies which have moved to Luton because the Airport provides access to other hub airports. Luton Airport is vital to Luton and its basic strategy. Luton Airport is also a vital component in the national picture of aviation and the Government policy that identifies why aviation is an intrinsic part of the economic health of the nation, as well as the important benefits that the ability to travel brings.

317. National policy is equally clear on the support to be given for development which drives economic growth and the delivery of jobs. Paragraph 8 NPPF²⁶⁹ sets out the overarching economic objective of a ‘strong, responsive and competitive economy’ which is to be achieved by ‘ensuring that sufficient land of the right type is available in the right place and at the right time to support growth, innovation and improved productivity’. Paragraphs 81 and 83 also provide strong support for this proposal:

‘81. Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future. This is particularly important where Britain can be a global leader in driving innovation⁴², and in

²⁶⁷ XX day 6 by LLAOL 5.11.22

²⁶⁸ Day 16 10.11.22

²⁶⁹ CD9.05

areas with high levels of productivity, which should be able to capitalise on their performance and potential.’

‘83. Planning policies and decisions should recognise and address the specific locational requirements of different sectors. This includes making provision for clusters or networks of knowledge and data-driven, creative or high technology industries; and for storage and distribution operations at a variety of scales and in suitably accessible locations.’ (emphasis added)

318. The Government’s plans to support economic growth through infrastructure investment are set out in ‘Build Back Better: our plan for growth’²⁷⁰. Page 31 of that document states:

‘High quality infrastructure is crucial for economic growth, boosting productivity and competitiveness. More than this, it is at the centre of our communities. Infrastructure helps connect people to each other, people to businesses, and businesses to markets, forming a foundation for economic activity and community prosperity. Well-developed transport networks allow businesses to grow and expand, enabling them to extend supply chains, deepen labour and product markets, collaborate, innovate and attract inward investment.’

319. Build Back Better focusses on three pillars of investment to form the foundation of economic recovery and levelling up. These are: (1) radical uplift in infrastructure investment, (2) creating new skill straining opportunities across the UK and (3) fostering the conditions to unleash innovation. Mr Hunt explains that the application will contribute to all three of these pillars.²⁷¹

320. The Government published its Levelling Up White Paper in February 2022²⁷². The White Paper has four aims. Two of which are directly relevant to the case for this scheme:

a) Boost productivity, pay, jobs and living standards, especially in those places where they are lagging.

²⁷⁰ CD17.03, addressed in Mr Hunt’s proof at paras 4.12-14

²⁷¹ Proof paragraph 4.14.

²⁷² CD16.16

b) Spread opportunities and improve public services, especially in those places where they are weakest.²⁷³

321. The missions sit beneath these aims and include:

a) **Living Standards:** By 2030, pay, employment and productivity will have risen in every area of the UK, with each containing a globally competitive city, and the gap between the top performing and other areas closing.

b) **Skills:** By 2030, the number of people successfully completing high-quality skills training will have significantly increased in every area of the UK. In England, this will lead to 200,000 more people successfully completing high-quality skills training annually, driven by 80,000 more people completing courses in the lowest skilled areas.

c) **Well-being:** By 2030, well-being will have improved in every area of the UK, with the gap between top performing and other areas closing.²⁷⁴

322. The Government has allocated a £4.8bn Levelling Up Fund which is a key element of how the Government intends to deliver the Levelling Up Agenda. The Government has grouped local authority areas into three categories of prioritisation. Luton Borough Council is in Priority Area 1 because of its high levels of deprivation.²⁷⁵

323. Jet Zero makes clear that aviation is a ‘sector that levels up the economy; anchoring communities through our supply chains and championing the potential of people through high-skilled, well paid jobs.’²⁷⁶

324. Quite apart from levelling up, Government aviation policy is clear as to the social and economic benefits which can be expected from airport development. The Aviation

²⁷³ Mr Hunt proof 4.16

²⁷⁴ Mr Hunt proof of evidence 4.17

²⁷⁵ Mr Hunt proof 4.20

²⁷⁶ CD11.19 para 2.20, cited in Mr Hunt proof at 4.34

Policy Framework (‘APF’)²⁷⁷ makes clear how important aviation is to the UK economy.
At paragraph 5:

‘The Government’s primary objective is to achieve long-term economic growth. The aviation sector is a major contributor to the economy and we support its growth within a framework which maintains a balance between the benefits of aviation and its costs, particularly its contribution to climate change and noise...’

325. At paragraph 7:

‘Aviation benefits the UK economy through its direct contribution to gross domestic product (GDP) and employment, and by facilitating trade and investment, manufacturing supply chains, skills development and tourism. The whole UK aviation sector’s turnover in 2011 was around £53 billion and it generated around £18 billion of economic output.¹ The sector employs around 220,000 workers directly and supports many more indirectly. The UK has the second largest aircraft manufacturing industry in the world after the USA and will benefit economically from growth in employment and exports from future aviation growth. Aviation also brings many wider benefits to society and individuals, including travel for leisure and visiting family and friends.’

326. At paragraph 9:

‘One of our main objectives is to ensure that the UK’s air links continue to make it one of the best connected countries in the world. This includes increasing our links to emerging markets so that the UK can compete successfully for economic growth opportunities. To achieve this objective, we believe that it is essential both to maintain the UK’s aviation hub capability and develop links from airports which provide point-to-point services.’

327. The APF makes clear that it is no part of Government policy to restrict outbound tourism Paragraph 1.16 of the APF is addressed further below.

328. The APF is also clear on the wider social benefits which come from aviation. At paragraph 1.17:

²⁷⁷ CD8.05

‘In addition to its economic contribution, aviation provides wider social benefits, enabling UK citizens to experience different cultures or enjoy a well-earned holiday. In an increasingly globalised society visiting friends and relatives is an increasingly important reason for flying; for example in 2011 it was the most common purpose of travel at Heathrow (36% of trips), Stansted (45%) and Luton (43%).²¹ Visiting friends and relatives also forms a significant proportion of business for airports outside London and the South East, which in some cases helps maintains the viability of their air links.’

329. The Airports ANPS²⁷⁸ reinforces the Government’s support for the economic benefits of aviation development. Paragraphs 1.2 and 2.2 state:

‘International connectivity, underpinned by strong airports and airlines, is important to the success of the UK economy. It is essential to allow domestic and foreign companies to access existing and new markets, and to help deliver trade and investment, linking us to valuable international markets and ensuring that the UK is open for business. It facilitates trade in goods and services, enables the movement of workers and tourists, and drives business innovation and investment, being particularly important for many of the fastest growing sectors of the economy.’

International connectivity attracts businesses to cluster round airports, and helps to improve the productivity of the wider UK economy. Large and small UK businesses rely on air travel, while our airports are the primary gateway for vital time-sensitive freight services. Air travel also allows us ever greater freedom to travel and visit family and friends across the globe, and brings millions of people to the UK to do business or enjoy the best the country has to offer.’

330. The ANPS makes clear the negative economic impact of constraints in airport capacity. At paragraph 2.10:

‘However, challenges exist in the UK’s aviation sector, stemming in particular from capacity constraints. These constraints are affecting our ability to travel conveniently and to a broader range of destinations than in the past. They create negative impacts on the UK through increased risk of flight delays and unreliability, restricted scope for competition and lower fares, declining domestic connectivity, erosion of the UK’s hub status relative to foreign competitors, and constraining the scope of the aviation sector to deliver wider economic benefits.’

²⁷⁸ CD 8.04

331. The Government's most recent policy (2022) confirms and reiterates the Government's view of the economic benefits of airport development. FtF's²⁷⁹ executive summary opens with:

'The UK's aviation sector and supporting industries, such as aerospace, are a real asset to the UK. They deliver important value for the UK and its citizens through providing travel opportunities, supporting business, and transporting freight. Before the COVID-19 pandemic the aviation sector contributed at least £22 billion to GDP (£14 billion from the air transport sector and a further £8 billion from aerospace) each year. Air transport directly employed nearly 150,000 people, and supported up to half a million more jobs across the UK, in aviation and aerospace.'

332. The Government's support for airport expansion is underpinned by the economic and social benefits it brings. At p.26:

'Airports are part of the UK's thriving and competitive aviation sector and play a critical role in boosting both global and domestic connectivity and levelling up in the UK. Airport expansion also plays a key role in this and the Government remains supportive of airport expansion where it can be delivered within our environmental obligations. The Government is supportive of airports bringing forward expansion plans by way of our existing policy frameworks for airport planning.'

333. FtF further emphasises the 'central role' which aviation plays in delivering local benefits across the UK. It states that '[T]his includes championing the levelling up agenda, strengthening union connectivity, boosting economic success, and supporting local jobs. It is important to recognise the role our extensive airport, airfield and aviation infrastructure network plays in providing benefits to local communities, as well as supporting associated supply chains and the aerospace industry.' (p.7) Points 6-8 of the 10 point plan included in FtF are entitled 'Realising benefits for the UK'. Points 6 and 7 give clear support to this application:

Point 6: 'Unlock local benefits and level up'

²⁷⁹ CD11.15

Point 7: ‘Unleash the potential of the next generation of aviation professionals’²⁸⁰

334. Similarly the Jet Zero Strategy²⁸¹ recognises the economic benefits of aviation. For example, it states at 2.20:

‘This is a sector that levels up the economy; anchoring communities through our supply chains and championing the potential of people through high-skilled, well-paid jobs.’

335. The Jet Zero Strategy confirms that the Government sees the decarbonisation of the aviation sector as another opportunity for economic growth. The foreword states:

‘Our aerospace exports, worth £34 billion, represent an estimated 13% of global market share and domestic production of SAF could support up to 5,200 UK jobs by 2035. The argument should therefore not be that aviation is too important to change, but that it’s too important not to change. The Jet Zero Strategy is not intended to clip the wings of the sector. Rather it is designed to future-proof aviation so passengers can look forward to guilt-free travel. In doing so our economy can reduce its dependence on dirty energy. We can unlock the benefits of green technology and the thousands of new skilled jobs that come with it....’

336. Bizarrely, Dr Chapman sought to argue that ‘statements made by government about the overall impact of aviation at the UK level do not necessarily apply to Luton’. He alleged that this was because Luton’s passenger profile is not representative of the UK at large.²⁸² In this Dr Chapman was obviously mistaken in principle and on the facts. As a matter of principle, there is no basis for disapplying Government policy to Luton. And as a matter of fact, the CAA Passenger Survey Report (2019)²⁸³ demonstrates that Luton’s passenger profile (business vs leisure passengers) is not materially different from the majority of major UK airports including: Gatwick, Stansted, Bristol, Manchester, Birmingham and East Midlands.²⁸⁴ Further, there is nothing in any of the relevant national policy documents which supports the view that the policy applies to some as opposed to other airports.

²⁸⁰ CD11.15 p.10

²⁸¹ CD11.19

²⁸² Paragraph 5.15 Dr Chapman Proof

²⁸³ CD12.04

²⁸⁴ Highlighted by Mr Hunt in XX by LADACAN Day 8 7.10.22

337. Ultimately, Dr Chapman eventually agreed that full weight should in fact be given to national policy.²⁸⁵ Mr Skelton, LADACAN's planning witness also agreed.²⁸⁶

Socio-economic context

338. It is difficult to overstate the importance of the Airport for the socio-economic health of Luton and the surrounding areas, and consequently the importance of supporting it into the future, quite apart from the clear national policy for sustainable airport growth.

339. The Airport directly accounts for nearly 12% of all jobs in Luton.²⁸⁷ Its importance was made particularly clear by the Covid-19 pandemic where Luton was one of the worst affected places in the country. As Mr Hunt explains in his proof 'The town already had economic and social challenges, and these have got worse since the Covid-19 pandemic. The longer they go on the greater the long-term scarring will be. These issues, and in particular the need for jobs, need addressing now'.²⁸⁸

340. As at June 2022 the unemployment rate is at 6.1%, as compared to a rate of 3.0% in the East of England and 3.8% in England.²⁸⁹ Figure 5.1 of Mr Hunt's proof demonstrates how badly hit Luton was by the Pandemic. LBC has, in gross terms, the highest rate of unemployment benefit claimants in the East of England. The number has doubled between January 2020 and April 2022.²⁹⁰ Large parts of Luton rank in the top 10 to 30% of the most deprived in England.²⁹¹

²⁸⁵ XX Day 6 by LLAOL 5.11.22

²⁸⁶ XX by LLAOL day 15 9.11.22

²⁸⁷ Andrew Hunt Proof para 5.1

²⁸⁸ Andrew Hunt Proof para.5.2

²⁸⁹ Andrew Hunt proof para 5.3

²⁹⁰ Andrew Hunt proof para 5.6

²⁹¹ Andrew Hunt proof para 5.7

341. On day 8 of the Inquiry Inspector Clegg asked whether there had been any benefit in terms of deprivation since 2013 during the rise of passenger numbers. Mr Hunt highlighted INQ30 ‘Evidence of Deprivation and Unemployment’. Figure 1 of that document shows the lower super output areas (‘LSOAs’) within Luton Borough which were within the 10% most deprived in England in 2010, according to the Government’s Indices of Multiple Deprivation (9 are shown). Figure 2 shows the LSOAs in the 10% most deprived in England in 2019 (4 are shown). Figure 3 of that document shows unemployment rates for residents over 16 during that time. It has dropped from 10.1% in the year of March 2012 to 4.4% in the year of March 2020. This drop took place at a time of the Airport’s growth.

342. Despite the fact that there has been a reduction in the number of most deprived areas between 2012 and 2020 (prior to the Pandemic), there is obviously no basis for complacency and the need for continued sustainable growth is obvious. Luton remains in priority area 1 for levelling up. The ranking is based upon a number of indicators, Luton performed as follows:

- a) 13th in England in the overall index (out of 309 local authorities – with 1 being the most in need and 309 being the least);
- b) 4th against Indicator 3: Need for Regeneration;
- c) 12th in terms of unemployment in 2020 to 2021 (dropping from 90th in 2019 to 2020); and
- d) 3rd in terms of commercial vacancy rates.²⁹²

343. Luton has also struggled to recover following the end of the cycle of lockdowns. As Mr Hunt explains, a ‘challenge for the local and regional economy is growing employment in response to the impacts of Covid-19.’²⁹³ In response to a question from

²⁹² Andrew Hunt proof para.5.9

²⁹³ Andrew Hunt proof para 5.12

Inspector Clegg Mr Hunt stated that it was a ‘timing point’ ‘it’s the urgency’. Luton has been particularly badly hit by the impacts of Covid-19.

344. As Mr Hunt explained in his evidence in chief, unemployment remains ‘horrifically high’ and any scheme which is providing more jobs is, by definition, contributing to levelling up.²⁹⁴ Dr Chapman in the end did not dispute the fact that deprivation is very high in Luton town centre and borough.²⁹⁵ He eventually conceded that the context was certainly important.²⁹⁶ It obviously is.

Socio-economic impacts of the scheme

345. The Applicant has, through its independent expert consultant Mr Hunt, provided an objective and considered further assessment of the socio-economic impacts of the scheme in light of the call-in by the Secretary of State and the request for the inquiry to address this issue.

346. Mr Hunt confirmed that he is a member of the Institute for Economic Development and a Council member of the National Infrastructure Planning Association²⁹⁷. He confirmed that he had applied best practice in his socio economic assessments of the proposal and confirmed that he had assessed the proposal with an open mind. He explained that a socio-economic assessment takes place within a policy context and this has implications for the way in which one approaches an assessment. He explained that there was no local policy requirement for a socio economic assessment to be undertaken and that what is required is circumstance specific.

347. Mr Hunt’s assessment (central estimate) shows that there would be an additional 660 jobs delivered per million passengers. This figure is on the basis of an average of 660 jobs per 1 million passengers based on the five years prior to the pandemic. The number

²⁹⁴ Day 7 6.11.22

²⁹⁵ XX by LLAOL Day 6 5.11.22

²⁹⁶ XX by LLAOL Day 6 5.11.22

of additional jobs which would be achieved by this proposal is 858 by 2024. This is where the gap is greatest in the with and without scheme scenarios. Mr Hunt has taken into account the fact that the number of jobs at the Airport has been declining over time. He therefore set out a low estimate where, if the trend between 2018 and 2019 were to be used there were estimated to be 565 jobs per mppa with 735 additional jobs above the baseline in 2025.

348. Mr Hunt explained that the types of jobs which would be created would be a range which would be broadly proportionate with customer facing roles at the Airport²⁹⁸. As Mr Hunt stated in his evidence in chief, the vast number of job categories at the Airport would ‘flex’ with additional passenger numbers²⁹⁹. Whilst he agreed that manufacturing probably wouldn’t move much jobs like ‘food services’, ‘administrative and support services’, ‘public administration’ (which includes passport control), ‘transport and storage’, ‘wholesale and retail’ would.³⁰⁰

349. There would also be the inevitable additional indirect and induced jobs which would increase employment across Luton and a wider area, with some of the benefits being national, these are set out at paragraph 6.17 of Mr Hunt’s proof.

350. Mr Hunt explained that the benefits could be expected to occur relatively quickly, as jobs occur vacancies get filled and people move off of the unemployment register.³⁰¹ The s106 includes measures to improve local access to jobs including:

a) An Employment Skills and Recruitment Plan, which will specify the measures put in place to improve opportunities for local people to find employment and improve their skills. This Plan will be promoted to businesses at the Airport, and the Plan’s implementation will be monitored through data reported by the Airport to LBC;

²⁹⁸ Confirmed in response to an Inspector question on day 8 7.10.22

²⁹⁹ Job categories found in CD8.26 p58

³⁰⁰ Evidence in chief Day 7 6.11.22

³⁰¹ Inspector question Day 8 7.10.22

b) A Local Employment and Training Initiative, paid for by the Airport through an Employment and Training Contribution, which is co-ordinated by LBC to support the employment and training of local people during the construction and operation of the Airport; and

c) A Local Procurement Protocol, which sets out the procurement procedures through which businesses can bid for goods and services contracts to support the development of The Airport.³⁰²

351. Counting simply the direct jobs, Mr Hunt estimates that the impact of the proposal would be to reduce unemployment in Luton by 5%.³⁰³ Currently, around 50% of the people who work at the Airport live in Luton.³⁰⁴

352. Mr Hunt also explained that the proposal would increase GVA. He set out two ways of calculating this GVA: either £44 per passenger or £70,000 per job. To be clear, these are methods of calculating the GVA and are not dependent upon or overlapping with the jobs created. The calculations equate to between £44m and £48.5m additional GVA per annum.

353. Mr Hunt's jobs figures were challenged by LADACAN through Dr Chapman, but without any alternative job figure being offered by Dr Chapman in his written evidence. A number of suggestions were put to Mr Hunt, largely seeking to suggest that Mr Hunt had chosen the wrong baseline or trends for his job identification. But as Mr Hunt explained that when looking at trends one has to understand what is going on underneath the figures. He gave the example of Monarch airlines going bankrupt in 2017 but highlighted that even in that year the number of jobs still went up. Further, whilst it is correct to state that there are productivity gains the trend is not smooth and linear and therefore one has to understand what the averaging is hiding. For example, he explained that the Oxford Economics report

³⁰² Andrew Hunt Proof para 6.24

³⁰³ Confirmed in response to inspector question Day 8 7.10.22 and proof para 6.25

³⁰⁴ Andrew Hunt proof para 6.22

shows³⁰⁵ that between 2017 and 2019 there was a fall in productivity. Whilst some of this is due to a statistical anomaly (the ONS having changed its definition) the lower productivity jobs have been growing more strongly.

354. Mr Hunt was also cross-examined on the basis a claim that his estimates of job creation did not align with the Oxford Economics Report for the DCO consultation ('OER').³⁰⁶ However, Mr Hunt explained that the first point was that there were assumptions made about productivity in the OER which meant that it was not possible to do a straight line comparison. He also explained that the increments of 100 reported in the OER meant that even on its own terms the number would be slightly higher.³⁰⁷ Mr Hunt explained that job increase is broadly proportionate to passenger numbers, and that between 2018 and 2019 the figure was 565, but at that time the number was continuing to rise and the Airport was actively recruiting. He also explained that his expert assessment was informed by conversations with the Airport and a change in working patterns post-pandemic.

355. LADACAN then put a series of further questions seeking to rely upon a 2013 baseline but reliance on one year is clearly no substitute for looking at more recent data and for avoiding taking one year out of context. Mr Hunt explained that the most recent year is the most relevant and that the years 2016-2019 have been pretty stable. Mr Hunt acknowledged that there is volatility in job numbers but the five year average for the relationship between jobs and passengers (used in his central estimate) smooths that out.³⁰⁸

356. LADACAN also questioned Mr Hunt suggesting that he ought to have made a discount for jobs which would be held outside of the borough. Mr Hunt explained that these are jobs within the borough anyway (although it seems very strange to discount jobs on that basis, as Luton borough residents are not confined to seeking jobs within its borough).

³⁰⁵ CD 16.02 p22

³⁰⁶ CD16.02

³⁰⁷ XX Day 8 7.10.22

³⁰⁸ XX Day 8 7.10.22

357. Accordingly, LADACAN has not presented any meaningful challenge to Mr Hunt's central estimate or other estimates of job creation.

358. In cross examination Dr Chapman eventually confirmed his equivalent figure for direct job creation (absent displacement, which is addressed below) would be around 400 jobs.³⁰⁹ He claimed that only 100 of these would go to Luton residents (though it is unclear what the basis was for this assertion). He confirmed, however, that 100 jobs would be 'very important' for Luton that even if the figures were 100 for Luton and 300 in neighbouring boroughs that would all be consistent with policy.³¹⁰

359. Mr Hunt stated the obvious, even if it were 400 jobs, that is 400 people moving out of unemployment without the stress, anxiety and misery of being unemployed.³¹¹ It is estimated that about 50% of these would go to Luton residents.³¹² He explained the fact that 50% would be outside of Luton should not be seen as a problem. Luton plays a sub-regional role and the Local Plan is not putting a wall around Luton, nor is deprivation confined to the Luton Plan area. He stated that Luton has every right to seek measures from the Applicant to target Luton residents but it is recognised in policy (and practice) that it will also benefit neighbouring areas.³¹³

360. Dr Chapman did not present an alternative figure for GVA to challenge those calculated by Mr Hunt.

Covid Impact

361. On day 7 of the Inquiry 6.10.22 Inspector Holden asked Mr Hunt about the impact of the proposal would be once Covid recovery had been factored in. Mr Hunt explained that he had considered the application with and without the scheme and the difference between the two. He explained that there was a degree of uncertainty around what Covid recovery looks like. Despite being unsupported by any evidence from its own witness to

³⁰⁹ XX by LLAOL Day 6 5.11.22

³¹⁰ XX by LLAOL Day 6 5.11.22

³¹¹ Evidence in chief Day 7 6.11.22

³¹² Confirmed by Mr Hunt in Evidence in Chief Day 7 6.11.22

³¹³ Evidence in Chief Day 7 6 November 2022

that effect, LADACAN suggested Mr Hunt that it was impossible for the socio economic assessment to be done without taking account of the increase in jobs through Covid recovery.³¹⁴ Mr Hunt explained that was wrong. One can consider macro trends informed by looking at what is going on underneath. Covid recovery is part of what is going on underneath. He explained that knowing the actual path to Covid recovery would not change his conclusions as to the socio-economic benefits as it was based upon a comparison with and without development scenario, so any Covid effects would apply to both.

362. Following his oral evidence, and in response to Inspector Holden's question, Mr Hunt provided INQ65 entitled 'Luton Airport Jobs Numbers – Post-Covid Baseline'. He explains at paragraph 1.2 of that note that this is a difficult question to answer, partly because of how employment at the Airport is measured and partly because of the effects of Covid-19 and how they are affecting employment patterns and measures of employment. The conclusions of that note explain that as set out in his Proof of Evidence, and not disputed by LADACAN in INQ-33 the ratio of passengers to jobs was fairly stable from 2016-19 with between 622-642 jobs per million passengers (para 4.4 INQ65). Mr Hunt explained that the best estimate is that this trend is likely to continue. He explained that whilst there have been some job losses, some of which may not return, there has also been an increase in part time workers.³¹⁵

Position of the Local Authority

363. The Business and Investment Unit have given strong support to this proposal.³¹⁶ It is worth setting out the summary of part of their consultation response which explains their reasons for their strong support:

- **Supporting Luton's economic recovery from Covid-19:** noting that Luton has been disproportionately affected by the pandemic, with the 7th highest number of furloughed workers, 32,000 jobs at risk and the 8th highest claimant count for cities and large towns.

³¹⁴ XX day 8 7.10.22

³¹⁵ Para 4.6

³¹⁶ Page 57 of the OR, CD5.07

33% of those employed are in the ‘at risk sectors’. A central pillar of the Council’s Luton 2020-2040 Vision is to ensure everyone in Luton has the opportunity to thrive and no one has to live in poverty.

- **Creating and safe-guarding jobs:** it’s estimated that the Airport supports 27,500 jobs and generates £1.1 billion economic across Luton, Bedfordshire, Buckinghamshire and Hertfordshire. Jobs will be created both directly at the Airport and indirectly associated with the increase in passenger numbers (including security, border control, baggage handling, retailing, hospitality, catering and crew).

- **Providing much needed learning, apprenticeships and career opportunities:** such as with the British School of Aviation, or LLAOL’s own successful work experience and entry into employment programmes for school children (working with the Prince’s Trust).

- **Increasing confidence in the aviation industry for tourism:** the expansion is seen as vital to Luton’s economy, providing confidence in current providers and to their retention, including airlines (easyJet and Wizz Air), retail and leisure clients. This will lead to long-term contracts and the expansion of services, including new routes to crucial markets outside the EU.

- **Supporting inward investment opportunities:** the development will be a key contributor to the Council’s ‘Investment Framework’ which aims to secure £1.5 billion investment to transform the town and create 18,500 quality jobs for local people; while driving improvements to health and wellbeing; creating opportunities for residents; raising aspirations; and enhancing prosperity across the town.’

The Residual Matters in dispute

364. In light of the above, there is in fact little remaining in dispute as to the fact of the socio-economic benefits as compared with the full extent of those benefits. Those points LADACAN did pursue do not have merit. Each is discussed below.

WebTag/Green Book

365. The central contention advanced by Dr Chapman was that this application assessment is in some way deficient because it lacks a WebTag/Green Book assessment. In this respect, this inquiry was ‘groundhog day’ for Dr Chapman. Dr Chapman confirmed

in cross-examination that he had: appeared as a witness at the Bristol Airport inquiry, spoken at the Stansted Airport inquiry and made representations in relation to Leeds Bradford airport's expansion arguing the same point.³¹⁷ Dr Chapman confirmed that at both of those inquiries and during the decision-making process for Leeds-Bradford Airport he argued that it was necessary to monetise the costs and benefits of the application through a WebTag/Green Book assessment.³¹⁸ His arguments were rejected in all of those decision making processes. Dr Chapman agreed that a finding that this application required a WebTag appraisal would also be inconsistent with the decisions on Bristol Airport, Stansted Airport and Leeds Bradford.³¹⁹

366. The Bristol Inspectors' decision states:

'At the Inquiry a number of parties argued that BAL should have carried out a Greenbook or WebTAG assessment. However, as the relevant guidance makes clear, the role of WebTAG is to appraise "government interventions in the aviation industry" with "the main user of this guidance...expected to be DfT itself." The proposed development is a private sector investment and not a government policy intervention. The Panel is not aware that any of the other recent airport expansion schemes undertook a WebTAG assessment. Accordingly, the absence of a WebTAG assessment does not weigh significantly against the development.'³²⁰

367. With respect, the Applicant submits that decision is clearly right. Dr Chapman eventually conceded that this application was not a Government intervention.³²¹

368. Dr Chapman then sought to argue that the Inspectors at Manston had considered the TAG guidance relevant. However, he later accepted in cross-examination that the Manston decision had in fact only referred to the WebTag approach to transport modelling.³²² Nowhere in the decision is there any support for the monetisation of costs and benefits as argued for by Dr Chapman of the type he claims is necessary. Dr Chapman

³¹⁷ XX Day 6 by LLAOL 5.11.22

³¹⁸ XX Day 6 5.11.22

³¹⁹ XX Day 6 by LLAOL 5.11.22

³²⁰ CD15.05 para 465

³²¹ XX Day 6 by LLAOL 5.11.22

³²² XX Day 6 by LLAOL 5.11.22

further agreed that he could not point to any planning appeal where a WebTag analysis had been undertaken. He accepted that he realised that he was asking these Inspectors to ‘break new ground’.³²³

369. There is no basis for doing so. Mr Hunt explained in cross examination that there are basic difficulties when the WebTag is applied to proposals such as this one. He highlighted that for the Government the process is about identifying value for money where public money is being expended. He explained that the Government sought to monetise impacts when spending public money in order to understand which policies have better value for money.³²⁴ These considerations simply do not arise here. This is a private commercial operator making this application and not spending any public money. LADACAN alleged in cross examination that there were public funds involved in this application.³²⁵ Such an allegation is simply wrong and no evidence has been produced for that allegation. Accordingly the underlying premise for a WebTag analysis of a Government intervention simply does not exist in this case.

370. Without prejudice to that position, even if one were to accept any need or benefit to be gained by monetising the impacts of this proposal, then the evidence already provided demonstrates beyond doubt that proposal is strongly net positive.

371. Dr Chapman sought to present the Inquiry with the negative side in terms of a calculation relating to the monetisation of GHG emissions. He admitted that the calculation conducted in his proof suffered from two errors. He therefore sought to present the Inquiry with what he asserted was an updated calculation as he gave his oral evidence.³²⁶ This updated calculation stated that the proposal would result in a discounted CO₂ cost of £11.7 million and a purported £15.2m costs of the CO₂ and non- CO₂ not paid by the industry. Dr Chapman accepted in cross examination that he had not performed a completed economic assessment but, rather, just an appraisal of climate change costs and he had not

³²³ XX Day 6 by LLAOL 5.11.22

³²⁴ XX Day 8 by LADACAN 7.10.22

³²⁵ XX day by LADACAN Day 8 7.10.22

³²⁶ INQ28

attempted to compare these to benefits of the proposal including the GVA.³²⁷ Yet on the most simple arithmetic, even were one to take Dr Chapman's costs at face value at their highest, the discounted GVA of the scheme far exceeds the costs anyway.

372. However, Mr Hunt correctly explained that Dr Chapman's calculation of the costs of emissions was fundamentally flawed even applying the WebTag guidance. Mr Hunt is well placed to say so. He explained that he is the expert for appraisal and evaluation on the use of the Green Book in his role on the Evaluation Panel on the LSE's What Works Centre for Economic Growth.³²⁸ He explained that there were four main errors. The first was the failure to identify what counter-factual was being used for the assessment. As to the other three, following a request from Inspector Clegg, these have been set out in more detail in INQ77. The three other main errors are that Mr Chapman:

- a. Should have identified which emissions are traded as the second step in his calculation (after specifying the counter-factual) whereas he has done it at the end (paragraph 3.3.3 of TAG Unit A5.2 (CD16.11));
- b. Should have addressed the non- CO₂ effects of aviation qualitatively, or presented as a sensitivity test, not as part of the core assessment (paragraph 3.3.3 of TAG Unit A5.2 (CD16.11));
- c. Has overestimated the cost of non- CO₂ effects of aviation.

373. As to the counter-factual, the need for this is set out in the WebTag guidance as the very first basic step³²⁹. When questioned about this, Dr Chapman admitted that he had not done this and it was clear that he had not carried out this basic step. But he then claimed that the counterfactual he was using was the "without development" assumption in the ES. On this basis, Dr Chapman has assessed all of the emissions as being net additional. Of course, this was fundamentally at odds with his economic claims in which he attempted to suggest that all of the benefits of the 1mppa would be 100% displaced. If that were true, then none of the emissions would be additional at all. They would have occurred at another

³²⁷ Accepted in XX by LLAOL Day 6 5.11.22

³²⁸ Re-examination Day 8 7.10.22

³²⁹ As required by BEIS Guidance at CD 16.13 paras 2.4-2.4

airport. On being cross examined on this point Dr Chapman asserted that 10-20% of the emissions would be displaced.³³⁰ He gave no reasoning for this guestimate and it rather undermines his allegation that all of the additional passengers and jobs from this proposal would be displaced from other airports. Further, Dr Chapman confirmed that he had assumed 1.1million tonnes of CO₂ from people travelling to the Airport by way of surface access. He then accepted that if those people were not permitted to fly at all, but were consequently having to travel in the UK for their vacations (eg to places like the Lake District for a holiday) then they would probably be travelling a lot further and generating more emissions in the counterfactual scenario. He accepted that it was conceivable that the counter factual for the analysis in terms of surface access would therefore be higher in costs than the figure he had used for the scheme in his cost benefit analysis.³³¹

374. With regards to non- CO₂, and his arbitrary tripling of the costs he attributed to these, Dr Chapman could not give a source in guidance or policy for such an exorbitant three times multiplier for those impacts in a cost benefit analysis. Moreover, he accepted that many of the measures directed at reducing CO₂ impacts would also reduce non- CO₂, so further illustrating the inappropriateness of tripling the costs in the way he did. He further accepted that calculating and incorporating the costs of this in the way he did was not consistent with the WebTag documents he had used. They state that Non CO₂ emissions should either be reflected in a qualitative assessment or as a sensitivity analysis, and not incorporation of the non-CO₂ figure into the original benefit to cost ratio calculation.³³²

375. As explained in INQ77, even if it is only the three errors listed above that are corrected (leaving aside the counterfactual corrections also required) then Dr Chapman's CO₂ value would be £10million and any non- CO₂ value should only be reported as a sensitivity test. Mr Hunt emphasised that he did not consider that it was necessary or appropriate for the exercise to be undertaken but provided the calculation simply to show

³³⁰ XX by LLAOL Day 6 5.11.22

³³¹ XX by LLAOL Day 6 5.11.22

³³² XX by LLAOL Day 6 5.11.22

the impact of the errors made by Dr Chapman. Again, the GVA alone from the scheme far exceeds any such costs.

376. Further, although Dr Chapman asserted that other disbenefits would need to be calculated and costed it is clear that that is not correct in this case. The TAG guidance makes clear that only **significant** impacts would need to be monetised in the analysis in relation to noise and air quality.³³³ Here, no significant noise or air quality impacts have been identified at all, and as such they would be incapable of increasing the costs in the benefits to costs calculation on the correct application of WebTag.

377. In any event, whether one takes Dr Chapman or Mr Hunt's corrections to his asserted figure (leaving aside the counterfactual corrections which would further eliminate the costs claimed), the proposal is clearly strongly net positive once those claimed costs are balanced against just some of the economic benefits that would arise. This is even the case if one takes Dr Chapman's highest figure of £15.2 million which includes CO₂ and non- CO₂. As Mr Hunt highlighted, Dr Chapman had not provided a counter-factual for his calculation and had assumed that all emissions were 100% net additional. Therefore, on a like for like basis the benefits should also be treated as 100% net additional. The GVA for the proposal (i.e. not counting employment benefit) is approximately £45 million per annum.³³⁴ Dr Chapman stated that the GVA estimates were dependent upon the creation of jobs.³³⁵ However, this is completely wrong as Mr Hunt stated in cross examination.³³⁶

378. In cross examination it was asserted that Mr Hunt was wrong in taking an average ticket price as opposed to a lower one in one of his methodologies for calculating GVA. There is no basis for this criticism. Using an average ticket price is entirely reasonable. This was not a point made by Dr Chapman and Mr Hunt explained that the ticket price is only one part of the GVA in any event.³³⁷ Further, Mr Hunt explained in re-examination

³³³ TAG unit A5.2 CD16.11 paragraphs 3.3.1 and 3.3.2 explained by Mr Hunt in chief Day 7 6.11.22

³³⁴ Andrew Hunt proof 6.18-19

³³⁵ Rebuttal proof 1.13

³³⁶ XX by LADACAN Day 8, 7.10.22

³³⁷ XX by LADACAN Day 8, 7.10.22

that this would not impact the alternative calculation of GVA at paragraph 6.18 of his proof of evidence which arrives at materially the same figure.

379. Mr Chapman stated in his evidence in chief that his costs could be stacked up against jobs and GVA figures.³³⁸ As can be seen, in this case the GVA alone more than outweighs Dr Chapman's asserted carbon costs of the scheme (even if one were not to correct any of his three errors, or the counterfactual all of which reduce any costs of the scheme as stated above).

Quality of the jobs

380. Dr Chapman also made a claim that the Airport pays its workers who live in Luton less than those who live in Bedfordshire and therefore the Airport was not contributing to levelling up. This argument is nonsense. As the Oxford Economics Report³³⁹ makes clear the Airport pays higher than average in every single listed geographical area.³⁴⁰ In any event, Mr Hunt explained that there is merit in entry level jobs which enable people go get work and progress. He described it as a 'critical local benefit'.³⁴¹ Mr Hunt further highlighted that lower paid people tend to have the shorter commuting distances.³⁴²

381. In response to a question from Inspector Underwood Dr Chapman accepted that it was a fair point that people in the jobs market might in any event be looking for lower paid jobs. Dr Chapman then stated that there were 'no opportunities for progression'.³⁴³ Again, that is nonsense. It is entirely unclear where his assertion comes from. Nor is there any evidence for his statement that the only additional jobs would be low paid. In response to a question from Inspector Holden Dr Chapman accepted that people may well get on the ladder and make progress.³⁴⁴

³³⁸ Day 6 5.11.22

³³⁹ CD16.02

³⁴⁰ Oxford Economics Report, CD 16.02, Figure 10

³⁴¹ EiC Day 7 6.11.22

³⁴² XX Day 8 7.10.22

³⁴³ Inspector Question Day 7 6.11.22

³⁴⁴ Inspector Question Day 7 6.11.22

Previous assessment in 2012

382. In his evidence in chief Dr Chapman alleged that the Halcrow assessment conducted in 2012 had been proven to be inaccurate and ‘grossly overstated’. In cross-examination he retracted this and confirmed that, in fact, the number of jobs actually delivered were within the range forecast that Halcrow had identified and that perhaps he had done them a ‘disservice’³⁴⁵ (as indeed he had). In any event, it is unclear where this point goes.

ES Screening

383. Socio-economic impacts were scoped out of the EIA process in relation to this application on the basis that the impacts did not meet the test of significance in EIA terms. The Inspectors have confirmed that the evidence of Mr Hunt is to be treated as ‘any further information’ for the purposes of the EIA regulations. As Mr Hunt explained, the fact that socio-economic impacts were screened out for EIA purposes does not make the benefits any less important. In response to a question on this point he highlighted that the application would create hundreds of jobs in a hugely deprived area which has suffered massively. These are jobs which the private sector is willing to provide. Getting the private sector to create jobs in areas of deprivation is really hard and that is important and significant in ordinary layman’s terms, if not in EIA terms.³⁴⁶

Level of Assessment

384. In cross examination LADACAN sought to criticise Mr Hunt’s evidence on the basis that it was not a ‘regional assessment’ Mr Hunt correctly identified that there is no Local Plan requirement for a regional economic assessment³⁴⁷, whatever that might be. He also made clear that the Green Book (the very document which LADACAN alleges applies) makes clear that one can undertake a place based assessment. It does not require either a national level assessment or a regional level assessment. He explained that it was

³⁴⁵ XX by LLAOL Day 6 5.11.22

³⁴⁶ XX by LADACAN Day 8 7.10.22

³⁴⁷ XX by LADACAN Day 8 7.10.22

appropriate in this case given the Government's priorities which are for economic development at Luton.³⁴⁸

385. But in any event, Mr Hunt further explained that there would be very little difference in a regional vs a sub-regional assessment anyway.³⁴⁹ This was all directed at some unsubstantiated claim that jobs at the Airport and in Luton would be displaced from elsewhere, but there is no basis for this claim and no other airport has expressed any concern of any kind of this nature. As Mr Gurtler pointed out the benefits of a sub-regional or regional assessment would be even greater than one which simply looked at Luton.³⁵⁰ LADACAN alleged that there was inconsistency with the approach taken for the DCO consultation for a much larger expansion of the Airport (which is not before this inquiry) and in relation to this application. Mr Hunt explained why this is a bad point. He highlighted that under the Planning Act 2008 the spatial scales of assessment are mandated for the DCO process. There needs to be consideration of the host and neighbouring authorities which is not the same under the TCPA 1990. He explained that DCOs are for nationally significant infrastructure projects which is, by definition, of a very different scale.

386. It is striking that LADACAN's own planning witness did not allege anywhere in his proof or rebuttal that Mr Hunt's analysis was not policy compliant on the basis that it was not regional or sub regional. Further, Dr Chapman confirmed that he had not considered or assessed local policy.³⁵¹ It is even more striking that LADACAN has not identified what difference a regional or sub regional assessment would make in this appeal. But it is equally obvious that it would just sweep in the wider economic indirect benefits of job creation and opportunities for travel that are expressed in national policy.

³⁴⁸ This was further explained in a question asked by Inspector Underwood. Mr Hunt stated that in 2020 the Green Book was changed to introduce a separate appendix on doing a place based assessment and that it is for the discretion of the assessor to define the place for assessment.

³⁴⁹ XX by LADACAN Day 8 7.10.22

³⁵⁰ XX by LADACAN Day 16 10 November 2022

³⁵¹ XX by LLAOL Day 8 5.11.22

Alleged Disbenefits

387. LADACAN repeatedly criticised Mr Hunt for not identifying any economic disadvantages in his assessment but that is absurd. Mr Hunt confirmed that he had, as in relation to all previous assessments considered if there would be any economic disadvantages of the proposal, but in relation to this scheme as he explained in response to Mr Wald KC's question with: 'the question is where are the disadvantages?'.³⁵² There are none. How could there be? It will create further important jobs in a hugely deprived area. It will deliver large amounts of GVA £45m, year on year. It will enhance airport capacity with all the identified benefits that brings as identified in national policy. There are no economic disadvantages to this proposal to identify.

GVA Figures

388. Mr Hunt explained that the figure of £48.5million per annum in GVA is not dependent upon employment. It is sales minus costs which is completely independent of the number of workers.³⁵³ LADACAN alleged that it was necessary to know about ticket prices in order to work out the GVA. Mr Hunt explained that was not the case. The figures that support the GVA analysis show a stable relationship between passenger numbers and GVA.

389. Mr Hunt also explained that it was not 'just jobs' that were significant in economic terms. He explained that the economic activity which comes to an area as a result of those jobs is also important. In response to question from Inspector Clegg Mr Hunt explained this further as being a range of expenditure in different areas. In other words, more passengers going through the Airport, more people staying in hotels, more people spending in shops in and outside the Airport and through the supply chain of all of those businesses. When asked whether that was a good thing Mr Hunt explained that it is economic growth.³⁵⁴ An objective of the Local Plan is not just jobs but is also GVA/GDP. He explained that when one looks at the NPPF it focusses on economic activity. It is right to focus on jobs because of the human element but in much of the policy, the focus is on economic activity.

³⁵² Day 8 7.10.22

³⁵³ XX by LADACAN Day 7.10.22

³⁵⁴ Day 8 7.10.22

Academic Literature on Economic Benefits and Aviation

390. Dr Chapman's proof of evidence selectively sought to refer to a number of academic articles which he claimed supported the proposition that aviation growth did not necessarily deliver economic benefits.³⁵⁵ He accepted in cross examination that he had been selective in his approach and bits of the articles support the opposite case and there were many articles that go the other way.³⁵⁶ Indeed, his assessment was highly partial. Section 9 of Mr Hunt's rebuttal demonstrates this. To take just one example, Dr Chapman quoted Sheard N (2021) 'The network of US airports and its effects on employment'. The quotation he provided stated:

'expanding an airport will generally lead to an increase in local employment, which motivates local governments to invest in their own infrastructure. However, this will cause traffic and therefore employment elsewhere to decline or increase, which is relevant to the interests of the federal government but the local government is not motivated to consider.'

391. As Mr Hunt's rebuttal demonstrates, the full quotation continues:

'As the effects on employment elsewhere tend to be positive and large for the larger airports, decisions being made at the local level leads to a network that is too dispersed to maximize national employment'

392. Further, the same document states:

'Air traffic is also found to have a positive effect on employment in the local area with an elasticity of 0.036 and a weakly positive effect on the employment rate in other places within 400 miles. Simulations suggest that for each job created in the local area by an airport expansion, two and a half jobs are created elsewhere in the United States due to the changes in the air network and the distribution of employment.'

³⁵⁵ Dr Chapman proof section 10

³⁵⁶ Day 6 5.11.22

393. Mr Hunt has identified other issues with Dr Chapman's exercise in his rebuttal. As Mr Hunt highlighted, the assertion that Dr Chapman's view is supported by a wide body of academic research is simply not correct. Further, and in any event, the principle which Dr Chapman was seeking to draw from his articles is at complete odds with Government Policy. That expressly connects airport expansion with economic growth and this is now expressed in Government policy. As Dr Chapman if accepted that if one were to go through each of the articles he had relied upon one would find views for and against Government Policy. It is for the Government to set policy in light of such higher policy questions and this boiled down to a naked attack on Government policy itself, by reference to a highly selective choice of articles which did not begin to present the overall picture. It was a manifestly inappropriate exercise to undertake.

Tourism

394. Dr Chapman, in similar vein, also sought to claim (surprisingly) that outbound tourism was a negative impact of the proposal. That too is nothing more than a direct attack on established Government policy and it has no foundation. Paragraph 1.16 of the APF clearly states:

'Consultation responses were divided on the economic impacts of outbound tourism. Some respondents considered that there was a 'tourism deficit', as more UK residents travelled abroad than overseas residents travelled to the UK. Other respondents highlighted that outbound tourism supports UK-based jobs in the travel and airline industry and boosts high street consumer demand before trips are made. The latter has been valued at around £27 billion per year.¹⁹ Responses confirmed that the 'tourism deficit' question is a complex one and that the evidence available to us does not show that a decrease in the number of UK residents flying abroad for their holidays would have an overall benefit for the UK economy. UK residents made 57 million visits abroad in 2011 and spent £32 billion, 84% of which was spent by residents who travelled abroad by air.²⁰ The Government believes that the chance to fly abroad also offers quality of life benefits including educational and skills development. Overall the Government believes continuing to make UK tourism more attractive is a better approach both for residents and attracting new visitors.'

395. This policy has recently been followed as part of the Bristol Airport decision where the Inspectors' report states:

‘457. BAL point out that outbound tourism has well established social and welfare benefits which are recognised by national aviation policy. At paragraph 1.16 the APF states “the evidence available to us does not show that a decrease in the number of UK residents flying abroad for their holidays would have an overall benefit for the UK economy.” It goes on to say “The Government believes that the chance to fly abroad also offers quality of life benefits including educational and skills development. Overall, the Government believes continuing to make UK tourism more attractive is a better approach both for residents and attracting new visitors.”

458. There have been no subsequent national policy statements and the above still represents the Government’s position on outbound tourism. Accordingly, while there may well be some negative economic effects arising from an increase in outbound tourism, the Panel considers that this should be weighed against the social benefits of foreign travel.’³⁵⁷

396. Dr Chapman accepted in cross examination that the APF is national policy and that the Inspectors should apply it in reporting this matter to the Secretary of State.³⁵⁸ He then went on to accept that the proposal would also enable passengers to come from abroad to spend in the UK and that this was consistent with government policy. He also agreed that the proposal would give the opportunity for affordable flights to travel abroad and that this was consistent with government policy.³⁵⁹ Dr Chapman then eventually conceded that this policy support was not a matter which was for debate at this inquiry.

397. Mr Hunt further explained that any claimed negative effects from outbound tourism (even if they were to occur which is not the assumption of Government policy) would not be felt in Luton in any event. He explained that people are not switching a holiday in Luton for a holiday overseas. It was then put to him in cross examination that the expansion may negatively affect places like Blackpool (despite no evidence of the same being before the Inquiry). Mr Hunt explained that the ability of Luton residents to go on holiday is not materially affecting Blackpool.³⁶⁰

³⁵⁷ CD15.05

³⁵⁸ XX Day 6 by LLAOL 5.11.22

³⁵⁹ XX Day 6 by LLAOL 5.11.22

³⁶⁰ XX by LADACAN Day 8 7.10.22

398. Further, Mr Hunt's rebuttal demonstrates that the studies relied upon by Dr Chapman to support his thesis that foreign and domestic tourism are substitutes for one another again relied upon selective quoting. Three of the studies do not apply to the UK and those studies which do which he cited are much more equivocal.³⁶¹ And he has not cited any of the articles that deal with the positive impacts of spending with foreign holidays. Again, Dr Chapman's opinion is lacking evidential support and runs contrary to clear government policy.

Displacement

399. Dr Chapman also attempted to claim that many of the additional 1m passengers would not be newly created but would be displaced from other airports. He provided no evidence for this assertion either. Mr Hunt has highlighted that he is wrong to simply state that it is 'best practice' to make that assumption.³⁶² It is striking that no airport has objected to the scheme on the basis that it will displace passengers or jobs.³⁶³ The example of the Bristol Inquiry is highly informative. There the Council was opposed to the Airport and it sought to allege that the proposal would lead to displacement away from Cardiff Airport. Unsurprisingly, such a ground of objection caused concern from the Inspectors dealing with that case. In that appeal the Inspectors noted the following concerns with the Council's approach:

'453. On a wider note, the Panel has some concerns with NSC's approach to displacement. At times during the Inquiry, NSC seemed to be almost advancing a case that economic development, including jobs for the residents of North Somerset, should be provided in other parts of the country, most notably at Cardiff Airport. That is an unusual position for a local authority to take because one of the primary objectives of the CS is to support and promote major employers such as BA.

...

455...If NSC's approach were to be adopted more widely then very little economic development could ever take place outside the most deprived parts of the country. That is

³⁶¹ Explained by Mr Hunt in Evidence in Chief Day 7 6.11.22

³⁶² Mr Hunt rebuttal 5.5

³⁶³ Confirmed by Mr Hunt in Evidence in Chief Day 7 6.11.22

clearly not what is provided for in Build Back Better and the Government's levelling up agenda.'³⁶⁴

400. The same point applies with even greater force for the deprived area of Luton.

401. Ultimately, there is no evidence that displacement would occur in this case. It is well documented that airport capacity is constrained in the south east and Government policy is predicated on the basis that all airports should make best use of their existing capacity. Further, as Mr Hunt highlights in his rebuttal there is significant spare labour in this particular area.³⁶⁵

402. In any event, Luton is in priority area 1 for levelling up (as set out above). As set out in Mr Hunt's evidence, even if displacement were to occur from other areas this would be consistent with the Government's Levelling Up Agenda. Dr Chapman confirmed that, in any event, the generation of jobs in Luton (even with displacement from elsewhere) would be entirely in accordance with the Development Plan.³⁶⁶

403. Dr Chapman attempted to suggest that displacement does not only occur between airports but also between sectors. He asserted that an additional flight overseas could be at the expense of a trip to the Lake District or a new TV from Argos.³⁶⁷ However, Mr Hunt highlighted in his evidence that this was simply not credible. First, only a very small proportion of passengers at the Airport come from Luton itself. Dr Chapman confirmed that he didn't know what proportion of passengers this was. He accepted that it was small could only state that it 'might be material'.³⁶⁸ Mr Hunt further highlighted that if a Luton resident decided to buy a television as opposed to flying abroad it is almost certainly going to be an import. Further, there is no evidence that the proposal would represent a transfer of jobs to the Airport from the town centre. As Mr Hunt stated, no one buys a coffee at the

³⁶⁴ CD15.05

³⁶⁵ Mr Hunt Rebuttal paragraph 5.3

³⁶⁶ XX LLAOL Day 6 5.11.22

³⁶⁷ EiC Day 6 5.11.22

³⁶⁸ XX by LLAOL Day 6 5.11.22

Airport instead of in the town centre.³⁶⁹ Under cross-examination Dr Chapman confirmed that he hadn't done his own analysis to support his hypothesis ³⁷⁰ and it defies comprehension.

404. Dr Chapman's case on displacement was nothing more than an assertion which is not supported by any evidence. Even if it were to materialise it would not amount to a breach of either Local or Government policy.

Conclusions on Socio-Economic benefits

405. In response to Inspector questions Mr Hunt explained how the proposal would deliver against the levelling up agenda. He explained that when assessed against the aim of boosting 'productivity, pay, jobs, and living standards, especially in those places where they are lagging' the Airport is a relatively high productivity and high pay employer within the borough and would make a direct contribution to that aim. Further, when considered against the aim of spreading 'opportunities and improving public services, especially in those places where they are weakest' the proposal would deliver by bringing more jobs to an areas where there are too few jobs.³⁷¹

406. Mr Hunt went on to explain that the proposal would deliver against the following Missions:

'a) **Living Standards:** By 2030, pay, employment and productivity will have risen in every area of the UK, with each containing a globally competitive city, and the gap between the top performing and other areas closing.'

b) **Skills:** By 2030, the number of people successfully completing high-quality skills training will have significantly increased in every area of the UK. In England, this will lead to 200,000 more people successfully completing high-quality skills training annually, driven by 80,000 more people completing courses in the lowest skilled areas.

³⁶⁹ Evidence in Chief Day 7 6.11.22

³⁷⁰ XX by LLAOL day 6 5.11.22

³⁷¹ Day 8 7.10.22

c) **Well-being:** By 2030, well-being will have improved in every area of the UK, with the gap between top performing and other areas closing

407. This is a proposal which fits squarely with the Government's Levelling Up Agenda. The socio-economic benefits of the proposal are strongly supported by the Local Plan and national policy. There can be no reason to give anything other than very significant weight to the economic benefits which this proposal will bring.

Other benefits of lifting the cap

408. As set out in the proof of Mr Hunt and in his appendix 1, the existing noise and passenger cap creates a tension which the s73 Application is intended to resolve.³⁷²

409. As explained in Appendix 1 to Mr Hunt's proof the slot system operates at the Airport. In simple terms, the note explains that an airport slot represents the 'right for a particular aircraft of a particular airline to utilize the infrastructure of an airport at a particular time of day. The slot includes use of terminal facilities, stands and runways all of which have their own constraints.'³⁷³

410. Slots are not allocated by the Airport but by the Airport Coordination Limited (ACL) a not-for-profit organisation which is owned by the airlines and operated independently of both airlines and airports.³⁷⁴ The Airport is able to use its scheduling declarations to influence behaviours and to ensure that capacity is not exceeded.³⁷⁵ However, airlines retain slots in perpetuity for their operations 'on the condition that they operate 80% of the previous season (summer or winter) of each series of slots. These are known as 'grandfather rights'. The slots held under the grandfather rights system are known as 'historic slots''.³⁷⁶

³⁷² Mr Hunt proof 6.35

³⁷³ Para.7

³⁷⁴ Para.10

³⁷⁵ Para.11

³⁷⁶ Para.12

411. As further explained in the LLAOL note more modern aircraft have more seats than their equivalent older counterparts.³⁷⁷ At para 65: '[T]his means that as modernisation progresses, the noise impacts reduce but, all other things being equal, the number of passengers which can fly on the same number of flights increases.'³⁷⁸

412. At present, the Airport is managing its throughput whilst modernisation is ongoing through the use of a Local Rule which it has agreed with the airlines. This has introduced a seat quota system. This means that where an airline introduces an aircraft with more seats to one of its slots it must remove seats/passenger numbers within its other slots in order to fully offset the increase.³⁷⁹

413. The Airport is competing with airports across Europe for the allocation of next generation aircraft. Capacity constraints at Luton discourage airlines from allocating their next generation aircraft to Luton as opposed to elsewhere.³⁸⁰ Airlines will not want to allocate next generation aircraft to Luton without being sure it can sell all of the seats on that aircraft.³⁸¹ Conversely, lifting the passenger cap will facilitate modernisation at Luton which brings the benefits of quieter more efficient aircraft.³⁸² This is evident from the forecasts which show 19mppa being met at almost full modernisation.³⁸³

414. Mr Gurtler, who has significant experience in planning and aviation (both for and against expansion), was asked about the need for the proposal by Inspector Clegg. There is no requirement to demonstrate need for the proposal in policy terms. But in any event, Mr Gurtler explained as follows 'One of the issues here on need is that I really believe is if the Airport does not get an increase to 19million we are not going to see the modernisation of the fleet. There will not be the incentive for low cost carriers to come to

³⁷⁷ Para.64

³⁷⁸ Para.64

³⁷⁹ Para.66

³⁸⁰ Para.68

³⁸¹ Para.68

³⁸² Para.69

³⁸³ 19million at 2028 Table 1 Appendix 1 to Mr Hunt proof and 88% modernization in 2028 table 2.2
ESA4 CD1.16

Luton with modernised aircraft. Not see the benefits of reduction in noise and CO2.³⁸⁴
When asked whether this was simply a benefit Mr Gurtler stressed that it was a need.

415. No main party has introduced any evidence to challenge the clear interrelationship between lifting the passenger cap and enabling faster modernisation. LADACAN did not pursue any points on this in their cross examination of Mr Hunt. As already stated, the only issue which has been pursued by LADACAN is the fact that the modernisation differential has not been factored into the ES. In other words, the ES has not applied a slower rate of modernisation in the baseline and a faster rate in the with scheme scenario. That is correct and has resulted in a more robust assessment as was accepted by Mr Skelton.³⁸⁵

416. There are also significant disbenefits of refusing the s73 Application. The LLAOL note explains that in 2024 in order to comply with Condition 10 noise restrictions the Airport would have to remove 20 daytime movements from the daily summer schedule (7%) and 13 night-time movements from the daily summer schedule (22%) compared with 2019.³⁸⁶ The removal of movements would have to be achieved through the removal of slots.³⁸⁷ The removal of movements (either through moving aircraft, moving rotations away from the Airport or aircraft flying longer routes) will have an obviously negative economic impact.³⁸⁸ However, as explained by the Airport the ‘cancellation or removal of slots would be likely to have repercussions for the confidence which airlines have in the Airport and may well lead to airlines focusing their operations (or certainly their modernised fleet) elsewhere. In short, airlines will not want to invest in operating from Luton where there is a potential for the Airport to interfere with those operations through the cancellation of slots.³⁸⁹

³⁸⁴ Day 16 10.11.22

³⁸⁵ XX by LLAOL day 15 9.11.22

³⁸⁶ Appendix 1 to Mr Hunt proof para.73

³⁸⁷ Para.74

³⁸⁸ Para.83

³⁸⁹ Para.84

Other Issues – Adequacy of the ES

417. LADACAN has repeatedly sought to criticise the ES as part of its representations and evidence to the Inquiry. However, notwithstanding this its own planning witness confirmed that the ES meets the requirements of Regulation 18 of the EIA Regulations.³⁹⁰ Regulation 18 governs the legal requirements for the content of environmental statements. Given this concession, it is difficult to see how any of LADACAN's various criticisms can have any bearing on this Inquiry.

418. However, given the fact that so much of LADACAN's case has been directed at the adequacy of the ES, we explain further why these criticisms have no merit.

419. The Applicant responded to LADACAN's points on the ES in its opening and those legal principles can be repeated here. First, the Courts have repeatedly emphasised in the face of challenges to development based on the EIA Regulations (which in turn give effect to the underlying EIA Directive) that the EIA Regulations are intended to be an aid to effective environmental decision-making, **not** 'a legal obstacle course' or 'obstacle race' for an applicant for planning permission.

420. This principle was originally articulated by the Lord Justice Carnwath (as he then was) in *R(Jones) v Mansfield District Council*³⁹¹. It was repeated by the Hon. Mr Justice Sullivan (as he then was) in *R(Hart District Council) v Secretary of State*³⁹². It was approved by the Court of Appeal in *R(Loader) v Secretary of State for Communities and Local Government*³⁹³. It was restated at the highest level by Lord Carnwath in the Supreme Court in *R(Champion) v North Norfolk District Council*³⁹⁴.

421. Second, whilst the EIA Regulations may require production of an ES for specified forms of development to identify 'likely significant effects', the **adequacy** of an ES in

³⁹⁰ XX day 15 9.11.22

³⁹¹ [2003] EWCA Civ 1408

³⁹² [2008] 2 P&CR 16, Sullivan J at [62].

³⁹³ [2012] EWCA 860, Pill LJ at [38] with which Toulson and Sullivan LJJ agreed.

³⁹⁴ [2015] UKSC at [64].

terms of the topics it covers in that respect and the extent of information provided is a matter of evaluative judgement for the relevant decision-maker, rather than being a matter of law or a matter for a Rule 6 Party³⁹⁵. The decision-maker in this case was originally the Council in its capacity as local planning authority and it is now the Secretaries of State. There appears to be a basic misapprehension on the part of LADACAN as to the effect of the EIA Regulations and their procedural nature and the process of publicity and consultation. The Applicant produced an ES. It is then subject to publicity and consultation. That process enables people to make representations on the information, or claimed deficiencies in it, which can then be taken into account by the decision-maker, but the fact that someone considers information in the ES to be deficient does not make the ES inadequate. Those representations will form part of the environmental information that the decision maker will take into account³⁹⁶.

422. Third, criticisms about the adequacy of the ES of the type LADACAN was advancing (asserting that it does not meet the requirements of the 2017 Regulations) **cannot** be a basis for refusing planning permission in any event. In accordance with Regulation 25 of the EIA Regulations, if an Inspector or the Secretaries of State dealing with an application are of the opinion that additional information is required in order for an ES to meet the requirements of the EIA Regulations and to be an ES, then the Inspector or Secretaries of State as the case may be must notify the Applicant in writing and the

³⁹⁵ See the Supreme Court in *R(Friends of the Earth Ltd and others) v Heathrow Airport Ltd* [2020] UKSC 52 at [142]-[148] endorsing the approach in *Blewett v Derbyshire County Council* that it is a matter of evaluative judgment for the discretion of the decision maker as to what information is to be included in an ES, subject only to review on normal *Wednesbury* grounds.

³⁹⁶ See Supreme Court in *R(Friends of the Earth)* (ibid): the process of requiring an ES to be publicised and subject to public consultation gives persons who consider it to be inaccurate or inadequate or incomplete an opportunity to make representations to that effect, but the EIA Regulations do not impose a standard of perfection in relation to the contents of an ES in order for it to fulfil its functions and for it to provide an adequate basis for public consultation. The Courts have warned against an unduly legalistic approach in relation to the assessment of the adequacy of an ES. It is unrealistic to expect every ES to contain “full information” about the environmental effects of a development; the process of publicity and consultation allows persons to make representations about the ES and any alleged deficiencies which forms part of the resulting environmental information for the decision maker to take into account. However, cases where the document purporting to be an ES is so deficient that it could not be reasonably described as an ES are likely to be few and far between. A decision maker has a wide range of autonomous judgment on the adequacy of the information provided.

Applicant must provide the further information. The Applicant complied with the Council's Regulation 25 request in the production of ESA3. It has subsequently produced an update of the environmental information given the passage of time in ESA4. No further information has been required. This was confirmed by Mr Skelton.³⁹⁷

423. Fourth, an ES is concerned with "likely significant effects" within the meaning of that particular expression in the EIA Regulations. That does not mean that an assessment of the planning merits of a development, and what are characterised as important or significant effects of the development in general planning terms, means that such effects must be "likely significant effects" for the purposes of the EIA Regulations³⁹⁸.

424. Mr Skelton confirmed in cross-examination that the purpose of a non-technical summary of an ES is to refine simply the very technical aspects of an environmental statement and to put them into a more accessible format for everyone to assess. It is notable that LADACAN has not criticized the non-technical summary to the ES. Mr Skelton accepted that the non-technical summary sets out the Applicant's assessment and that it deals with all technical matters. He confirmed that in his opinion it was 'relatively clear'.³⁹⁹

425. In this case the LPA requested additional information under regulation 25 of the EIA Regulations and that was provided. Mr Skelton accepted that Regulation 25 also applies to the Secretaries of State. If they consider that any information is lacking then it is open to them to request further information and that they would have to notify the Applicant in writing of an alleged deficiency.⁴⁰⁰ Mr Skelton confirmed that there is no outstanding request.

426. LADACAN's criticisms of the ES have been focused on the noise chapter⁴⁰¹. LADACAN has made repeated requests for information from the Applicant and these have

³⁹⁷ XX by LLAOL Day 15 9.11.22

³⁹⁸ See R(Evans) v First Secretary of State [2003] EWCA Civ 1523 at [19].

³⁹⁹ XX by LLAOL Day 15 9.11.22

⁴⁰⁰ XX by LLAOL Day 15 9.11.22

⁴⁰¹ Cait Hewitt confirmed that she took no issue with the emissions calculations in the ES

been provided as set out in CD13.57. The Applicant has also responded separately to LADACAN with regards to queries related to Table 8B.1 in the ES, resulting in a track changed version of that table.⁴⁰² As has been set out above, the Applicant offered LADACAN a meeting with BAP who had conducted the noise modelling for the ES but this was turned down and was not even communicated to its own noise expert.

427. Ultimately, as stated above, LADACAN's own planning witness has confirmed that the ES complies with Regulation 18 EIA Regulations. As such, the criticisms leveled by LADACAN throughout their written evidence have no basis.

The Development Plan and the planning balance

428. As stated in the introduction above, this is an Application which fully accords with the development plan and as such, the statutory presumption is that permission should be granted. Above we have addressed the main policies which relate to this appeal and don't repeat those submissions but we conclude with LLP6 which is the policy which governs airport expansion.⁴⁰³

429. The reasoned justification provides further strong support for the expansion of the Airport. All witnesses agreed that it specifically contemplates additional growth beyond the already consented 18mppa, subject to compliance with the identified criteria.

430. Part B of that policy provides that proposals (including expansion) at the Airport will be supported where certain criteria are met. In this case, all 9 of the criteria are met (as covered in the evidence). In short :

Criterion i – The Application is directly related to airport use of development

Criterion ii – The Application contributes to achieving national aviation policies including Jet Zero, FtF, MBU and the APF;

Criterion iii – The Application is in accordance with the latest Master Plan⁴⁰⁴; there has been no challenge to that adoption or that Master Plan

⁴⁰² CD1.21

⁴⁰³ The Applicant's case on the planning balance is set out in Mr Bashforth's proof of evidence

⁴⁰⁴ CD5.05

Criterion iv – The impacts of the Application have been fully assessed and, despite no significant adverse effects being identified, mitigation has been proposed in any event which also will mitigate existing noise;

Criterion v – The Application achieves further noise reduction (not least through the enhanced noise insulation scheme) and causes no material increase in day or night time noise (as all the expert witnesses have agreed) and the application does not otherwise cause excessive noise (no one has suggested otherwise). Under the policy only one of these two sub-criteria need to be met, but this Application meets them all. Further the Application accords with the most recent Noise Action Plan;

Criterion vi – the Application 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 the Local Plan and any planning permission which has been granted. This is set out in the Noise Management Plan;

Criterion vii – the Application clearly does include proposals which will, over time, result in 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. It reincorporates the approach of the 2014 and 2017 Planning Permissions with the shrinking of the noise contours over time. Moreover, it provides a smaller contour beyond 2031. And it will facilitate and accelerate the modernisation of the fleet mix that brings with it the associated benefits. In addition, and significantly, it introduces the significantly enhanced mitigation scheme which (as explained by Mr Thornely-Taylor, Mr Holcombe and the planning witnesses) offers significant noise reductions in affected properties where it is installed, and which scheme will be extended both in terms of funding and availability over time significantly as described above.

Criterion viii – the Application incorporates sustainable transportation and surface access measures which minimise the use of sustainable transport modes and seek to meet modal shift targets all in accordance with the London Luton Airport Surface Access Strategy. Indeed, the Application goes further than the current ASAS and sets stretching targets in the Travel Plan and provides for an updated ASAS to be submitted for approval.

Criterion ix – the Airport already has suitable road access for vehicles and no improvements are necessary as a result of this application.

431. This is therefore an Application is fully supported by the Luton Local Plan, not just LLP6 but the raft of other policies which no one has suggested any conflict with. Added to this are other material considerations (most notably the economic and social benefits which are themselves strongly supported by national policy) which weigh heavily in favour of a grant of permission. The local planning authority supports the application. Even if any conflict were to be found with any of the policies, for the reasons explained by Mr Bashforth, any such conflict is outweighed by the many and compelling benefits of what is proposed such that the application should be approved, as the Council itself concluded when originally of the view that there was conflict (now being satisfied that no such conflict arises in light of the updated assessment in ESA4).

432. We therefore commend this Application to you and urge you to recommend that the Secretaries of State grant planning permission for this development as a matter of urgency.

JAMES STRACHAN K.C.

VICTORIA HUTTON

39 Essex Chambers

21 November 2022