

Our ref: Q10064
Your ref: 22/03045/VAR
Email: sean.bashforth@quod.com
Date: 18 May 2023



Director of Planning & Development
London Borough of Newham
Newham Dockside, 1st Floor – West Wing
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Beckton
E16 2QU

For the attention of Liam McFadden

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
SECTION 73 APPLICATION to VARY VARIOUS CONDITIONS ATTACHED TO
PLANNING PERMISSION 13/01228/FUL (LPA REF. 22/03035/VAR): LONDON
BOROUGH OF TOWER HAMLETS CONSULTATION RESPONSE**

I refer to the above S73 application and enclose a response to the matters raised in the consultation response from the London Borough of Tower Hamlets dated 20 April 2023.

I trust this is of assistance and please do not hesitate to contact me if you have any questions or require further information.

Yours sincerely

Sean Bashforth
Senior Director
Encl.

cc. London City Airport

Liam McFadden
London Borough of Newham
Development Control
First Floor West
1000 Dockside Road
London
E16 2QU

18th May 2023,

Dear Liam,

Response to the London Borough of Tower Hamlet's Letter of 20th April 2023 raising queries on the Environmental Statement (ES) submitted with London City Airport's Section 73 Application

I refer to the above application and the consultation response of the London Borough of Tower Hamlets (LBTH) dated 20th April 2023 and am responding on behalf of London City Airport (LCY) in our capacity as lead authors of the Environmental Statement (ES).

The airport and its consultants have now reviewed LBTH's letter in detail, which comments on various aspects of the Environmental Impact Assessment (EIA) process and the ES submitted with the Section 73 application. Our response to this letter is set out below, focussing on those matters which LBTH consider to be EIA Regulation 25 matters (i.e., requiring further information in order to satisfy the requirements of Regulation 18(3) and (4) and "*which is directly relevant to reaching a reasoned conclusion on the likely significant effects of the development described in the application in order to be an environmental statement etc....*").

In our opinion, none of these are Regulation 25 matters and several of the points they make are incorrect and/or based on misunderstanding or misinterpretation. Further, LBTH had the opportunity to comment on the content of the ES when they were consulted during the scoping stage. As far as we are aware, they did not comment at that time.

LBTH makes a number of additional comments on the application which are duly noted, but which the airport does not feel require a response at this time.

This letter provides our response to each matter which LBTH claim are 'Regulation 25' points as well as clarifying some comments on the air quality assessment, as follows:

The Environmental Statement

LBTH cite Paragraph 3.3.20 of the ES saying that "*significant effects from the CAP1 [sic] scheme have been scoped out of the ES on the basis that they will remain unchanged from the 2015 ES*" and that "*this approach is not in accordance with the EIA Regulations which requires the ES to*

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assess the significant effects of the Proposed Development sought for approval and must be valid at the time of determination”.

Firstly, this is an incorrect interpretation of what this paragraph of the ES actually says, which is:

“Importantly, the Scoping Opinion confirmed that the following EIA topics could be scoped out of any further assessment in this ES. As set out in the Scoping Report (Appendix 3.1), the rationale for scoping out these topics was mainly on the grounds that they had already been assessed within the 2015 UES, will not be materially influenced by the proposed amendments and/or are unlikely to give rise to any ‘significant environmental effects’ as a consequence of this S73 Application”.

In other words, the current ES did not scope out any “*significant effects*” of the CADP1 scheme. Moreover, the 2015 UES concluded that there would be no significant effects for these topics, accounting for the proposed and subsequently approved mitigation measures. However, most importantly, because the S73 application does not seek to enlarge or otherwise vary the approved terminal designs or the largely built out CADP1 infrastructure (i.e., the new deck and stands), there was no need to reassess the associated environmental effects. This approach was agreed by LBN and its professional consultant advisors (led by LUC) at the scoping stage.

In the letter, LBTH “*strongly advises the LBN to issue a Regulation 25 request, to ensure the likely significant effects that have been incorrectly scoped out are assessed in the ES as required by the EIA Regulations*”.

As indicated above, LBTH were consulted by LBN at the EIA scoping stage and had the opportunity at that time to raise any queries or representations on the proposed scope of the EIA. However, it chose not to. Additionally, as confirmed by LUC’s draft review and advice on the submitted ES, they are satisfied that it meets the statutory requirements of the EIA Regulations and, with the exception of some points of clarification and detailed points on the air quality assessment, they have not changed their view that the EIA scope is appropriate, as originally agreed in the Scoping Opinion of 24th November 2022. In particular, they had no material comments on the ‘scoped out’ topics which were presented in Chapter 13 of the ES including:

- Water Resources and Flood Risk;
- Ecology and Biodiversity;
- Ground Conditions and Contamination;
- Archaeology and Built Heritage;
- Townscape and Visual Impacts;
- Waste; and
- Major Accidents and/or Disasters

Major Accidents and/or Disasters

With regards to Major Accidents and Disasters, LBTH appear to question why this topic was scoped out and also consider that insufficient information has been provided regarding the existing operational and safety protocols being relied upon. They claim that the ES should have included “*a definition of the current systems in place to address impacts for these matters (and explain any changes that may be required to those current systems)*” and “*where significant effects are likely to occur, this should be assessed in the ES*”.

This appears to miss the point that the scoping out of this topic had already been agreed with LBN and its professional advisors, so this topic did not need to be addressed in any detail in the ES. The information provided in ES Chapter 13 was merely to provide some context to why the topic was scoped out and not to present a detailed account of the safety management systems in place

at the airport. However, to reiterate the point, there are no changes to these systems as a result of the S73 application and the existing Crisis Response Plans in place at the airport cover all major airport/aircraft incidents, fires at the fuel farm and other potential incidents including flooding.

LBTH state that *“it is relevant to note that Majors Accidents and Disasters have been scoped into the ESs in relation to other airport expansions including Gatwick, Heathrow, and Luton Airports and therefore it cannot be assumed there would be no likely significant effects on the basis the Proposed Development is an airport project”*.

However, these are very different proposals in terms scale and complexity – all three being Nationally Significant Infrastructure Projects (NSIPs), hence why the scoping opinions were issued by the Planning Inspectorate rather than the Local Planning Authority. Each of these NSIPs involves major changes to airport infrastructure and operating procedures to accommodate increases in aircraft movements. Accordingly, in consultation with the CAA, the Planning Inspectorate considered that it was appropriate in these instances for the EIAs to ‘scope-in’ this topic in order to assess any changes to the risk of accidents and airside hazards associated with the proposed reconfiguration and remodelling of these airports and flightpaths.

A more appropriate comparison might be made to the EIA scoping opinion issued by Uttlesford District Council (UDC) on 21st December 2017 in regard to Stansted Airport Limited’s (STAL) proposal to increase its passenger cap from 35mppa to 43mpp, plus two new links to the runway and nine new aircraft stands, known as the ‘Stansted 35+ project’ (planning ref. UTT/17/1640/SO). In that case, it was agreed that a detailed assessment of Major Accidents and Disasters was not necessary. Notably, this position was not questioned during the subsequent planning inquiry or in the Planning Inspector’s final report.

As the competent authority on this matter, the CAA has not commented on the LCY’s S73 application or suggested that an assessment should be made of Major Accidents and Disasters, at either the scoping stage or during the current consultation by LBN. However, both the CAA and DfT are fully aware of the current S73 application through the airport’s ongoing discussions with these authorities.

EIA Methodology

LBTH state *“LBN is advised to consider whether the methodology adopted in the ES is appropriate and does not under or overstate the assessment of effects”*.

By engaging a team of professional consultants to review the ES (and scoping report before that), we consider LBN has already received this advice. In their review of the submitted ES, LUC conclude that it meets all regulatory requirements as well as the IEMA Quality Mark criteria for EIA. They do not dispute the scope, methodology or impact assessment findings presented in the ES.

The methodology of the EIA, which is described in Chapter 3 of the ES, is fully compliant with the intent and statutory requirements of the EIA Regulations. A similar methodology has been applied in other airport EIA’s in recent years, including the ‘Stansted 35+’ planning application which was examined at a planning inquiry in 2021 and found to be technically and legally sound.

Baseline and Assessment Scenarios

LBTH question why the *“baseline without CADP1”* has not been established in the ES and consider this is necessary in order to assess the environmental effects of *“the whole development which is subject to the EIA i.e. CADP1 plus the Proposed Amendments.... as required by the EIA Regulations.”*

This demonstrates a fundamental misunderstanding of the status of the S73 application and the fact that CADP1 has already been implemented and most of the airfield infrastructure has already been built. There is no realistic 'without CADP' baseline because were the proposed increase in the passenger cap and other amendments not to be approved, the airport would still continue to grow and make use of the new CADP1 stands and parallel taxiway.

The ES does assess the “*whole development*” by considering the combined impacts of the consented development and the S73 proposals. The Development Case (DC) assesses the CADP1 development as approved plus the proposed variations to the planning conditions and building out the remainder of the CADP1 scheme, whereas the Do Minimum (DM) scenario considers the CADP1 development minus the proposed variations to the planning conditions (i.e., with 6.5 mppa and existing restrictions on hours of operation). There is no other plausible future baseline scenario.

This matter was previously discussed with LUC at length and accepted by both LUC and LBN by virtue of the Scoping Opinion issued on 24th November 2022.

Cumulative Schemes

LBTH says that the cumulative schemes scoped out of the assessment, as set out in Appendix 14.1 of the ES should be reviewed and refers to a number of developments in the borough (ID 65, Blackwall Reach, ID 66, Wood Wharf and ID 71, South Quay Plaza) which are not yet complete or operational. Whilst the status of these three schemes, as presented in the 'long list' tables in Appendix 14.1, may not be entirely up to date, this minor omission does not represent a material issue. Indeed, irrespective of when these schemes will be finalised, they would have been screened out of the 'short list' for the Cumulative Effects Assessment (CEA) presented in Chapter 14 of the ES due to their distance from the airport and the fact that they are outside of the Zone of Influence (Zoi) for most assessment topics.

LBTH rightly note that the majority of cumulative schemes in LBTH were scoped out on the basis of distance. However, it is incorrect to then say “*the ES demonstrates that the Proposed Development would result in adverse effects in the locations of the majority of the schemes*” or that there is a possibility of significant cumulative effects with developments in the borough. The ES clearly demonstrates that this is not the case.

With respect to air noise effects, a wider spatial Zoi was adopted through the modelling of 'worst case' air noise contours and the inclusion of permitted residential developments within them, which may be built out between 2023 and 2031. Additionally, the traffic model used in the Transport Assessment (TA), which also generated data for the noise and air quality assessments, includes all foreseeable cumulative developments along the highway links which were assessed, and this was approved by TfL.

As such, it is considered that the assessment of cumulative effects presented in the ES is thorough and robust.

Climate Change

LBTH says:

“Table 11-38 of the ES concludes that no effects will be significant from the resilience to climate change assessment, despite Moderate and Large adverse effects being concluded and no further mitigation measures proposed. Noting that Chapter 3 of the ES confirms moderate and major effects are significant. In addition, Table 11.36 of the ES which presents the significance of effects matrix for the resilience to climate change assessment, is not in accordance with significance

matrix set out in IEMA Environmental Impact Assessment Guide to Climate Change Resilience and Adaptation (2020) whereby a medium likelihood, and moderate consequence would result in a significant effect. The significance matrix and assessment should be amended in line with best practice guidance, as it currently underplays the likely significant effects”.

In response, it is important to note that:

- Chapter 3 of the ES refers to moderate and major **effects** as being classified as significant, whilst the Climate Resilience assessment is based on a risk-based assessment which considers consequence (magnitude of impact) and likelihood in establishing risk. In this case it is not appropriate to conflate consequence (e.g. a moderate adverse consequence) with an environmental effect as detailed in Chapter 3. The two are not the same.
- The assessment has been based on IEMA guidance which is not prescriptive. Specifically, the climate resilience assessment notes in paragraph 11.14.1 *“The assessment methodology takes into account the recommendations in the IEMA EIA guide to Climate Change Resilience and Adaptation and has been adapted to ensure the assessment is proportionate to the proposed development”*. The matrix presented in Table 11.36 therefore represents the professional interpretation of the guidance taking into account the specific nature of the development.
- This is entirely appropriate since the IEMA guidance is not prescriptive on the assessment of significance and presents a number of alternative methods that are based on **examples** taken from the literature. Specifically, the guidance states that *“Definitions of likelihood and magnitude will vary from scheme to scheme, and should be tailored to a specific project. It is not within the scope of this guidance to prescribe a single approach to the assessment of likelihood and magnitude of climate impacts”*
- The example risk matrix that is referred to in the IEMA guidance relates specifically to Highway’s England Projects which are clearly not the same as an airport project. In the case of the proposed development the judgement has been made to classify effects as not significant where they are deemed to represent a high likelihood (i.e. may occur several times within the proposed development’s life), but are of minor consequence (i.e. a small disruption to a limited number of passengers) or are of medium likelihood (i.e. may occur from time to time within the proposed development’s life) and of moderate consequence (i.e. some disruption or loss of service affecting a larger number of airport users); and
- Notwithstanding the judgements made on how to apply the IEMA guidance it is instructive to note that the risks referred to by LBTH as potentially significant relate to extreme weather events such as high winds and snow which have specific risks to airports and for which the airport has developed robust mitigation plans outlined in Tale 11-37. Notably, the airport’s Heat and Winter Plans are dynamic plans that will continue to be developed to manage climate risk in the future. As such the effects of these climate risks are judged to be not significant.

In conclusion, we therefore consider the assessment is appropriate and proportionate and represents good practice taking into account expert judgement and available guidance.

Air Quality

Whilst LBTH do not identify any ‘Regulation 25’ matters in respect of the air quality assessment, they do however make a number of comments on this assessment and the ES chapter, which we duly respond to below:

“The ES states that air emissions per passenger are predicted to fall by 2031. However, the total air emissions will increase from the existing levels with the proposed expansion. This overall increase is in conflict with local, regional and national air pollution targets on reducing air emissions. The proposals will worsen the local air quality and its exposure to residents”.

It is important not to confuse **emissions** and **concentrations**. As noted in para 9.7.2 of the ES, emissions data should be used with caution, since they are not a direct measure of impact. Emissions from aircraft have been calculated within the Landing and Take-off (LTO) Cycle to a ceiling altitude of 915 m (3,000 ft). Emissions at altitude have very little impact on ground-level concentrations and cannot be directly compared with those emissions derived from solely ground based sources. It should also be noted that the predicted concentrations of all pollutants (nitrogen dioxide, PM₁₀ and PM_{2.5}) are lower for all future DM and DC scenarios than for the 2019 baseline year, and there are no significant effects. The proposals will not significantly worsen air quality in LBTH.

LBTH says:

“Figure 9.4 of Chapter 9 – Air Quality, confirms that several receptors in LBTH have been assessed. However, the figure is not marked up with receptor ID from Appendix 9.2, and it’s unclear what the receptors ID are for Aspen Way, Leamouth Road or Lower Lea Crossing, as none of these road names are listed. In addition, none of the grid references in Table 9.2.1 of Appendix 9.2 are locations in LBTH. It is therefore not clear if these roads have been assessed or what the air quality effects on LBTH are”.

The rationale for the selection of receptors is set out in paragraphs 9.4.20 and 9.4.21 of the ES. The receptors located in LBTH are listed in Table 9.2.2 of Appendix 9.2 and are all PCM locations (at 4m distance from the kerb) for assessment against the limit values. Concentrations at any receptors further back from the kerb will be much lower.

The receptors are:

- Aspen Way (LV1 and LV2)
- Lower Lea Crossing (LV3 and LV4)
- Leamouth Road (LV5 and LV6)

There are no predicted exceedances at these receptors, the impacts are all negligible, and there are no significant effects.

LBTH further says:

“The assessment has concluded that the Greater London Authority Target of 10 µg/m³ will be exceeded in all scenarios, with the greatest change from the Proposed Development at 1%. This would also result in the exceedance of the Environmental Improvement Plan interim target of 12 µg/m³ by 2028 being exceeded. It is apparent that the Proposed Development contributes to this target not being met”.

Predicted concentrations exceed the GLA target of 10 µg/m³ at all receptors in both the DM and DC scenarios in 2031. The greatest change between the DM and DC scenarios is in fact 0.07 µg/m³ (to 2 significant figures) or 0.7% of the target (which is rounded to 1% for purpose of the EPUK/IAQM descriptors). The Proposed Development does not cause an exceedance of the (non-statutory) GLA target and the incremental change cannot be considered significant.

The interim targets in the EIP are not regulatory. The highest predicted PM_{2.5} concentration in 2029 and 2031 is 12.2 µg/m³, but the incremental change between the DM and DC scenario is less than 0.1 µg/m³, negligible and cannot be considered significant. There are no other predicted exceedances of the Environmental Improvement Plan (EIP) interim target in either 2029 or 2031. Notwithstanding this, DLUCH wrote to all Chief Planning Officers in March 2023 advising that guidance was in preparation on how the new targets should be considered in the planning process, and that until such guidance was published the new targets should not be considered in the decision-making process.

Lastly, in respect to air quality, LBTH says:

“Table 9.4.14 of Appendix 9.4 confirms that the Proposed Development would result in increase to Nitrogen Dioxide Concentrations at all locations assessed”.

That is correct – but the impacts are all described as negligible and there are no significant effects.

Noise

In respect to the noise assessment and ES chapter, LBTH says:

“Whilst it is agreed that road noise is likely to be greater closer to the airport, it does not preclude adverse and significant adverse effects occurring further than the study area assessed. It is considered that further justification should be given in relation to the traffic figures established, to confirm whether the study area should be extended, noting for example Lower Lea Valley Crossing (Westbound) experiences an increase of traffic of 10.3% in the PM peak hour”.

The methodology for establishing the traffic flows has been clearly set out in Chapter 10 of the ES and this was agreed beforehand with TfL. In particular:

- 2019 baseline traffic flows on the surrounding highway network were established from available 2019 survey data and factoring up of flows in the 2016 Highway Assignment Models (HAM) supplied by TfL;
- 2019 baseline traffic flows generated by the airport were established from 2019 CAA passenger and staff surveys plus records of servicing activity; and
- Future year traffic flows for the DM and DC scenarios were established with reference to the 2031 HAM models, with traffic flows to/from the airport adjusted to take account the predicted growth in passenger numbers and changes to mode shares.

LBTH's claim of a 10.3% increase in traffic at Lower Lea Valley Crossing (Westbound) does not correspond with Steer's (the airport's transport consultant) assessment that traffic generated by the proposed development would actually result in a circa.1.5% increase at this link - i.e., a near ten-fold disparity, which suggest that LBTH has misinterpreted the traffic model outputs.

With respect to the assessment of road traffic noise, as set out in the Design Manual for Roads and Bridges (DMRB) published by Highways England (now National Highways), specifically document LA 111 Noise and vibration, a sufficient study area for most projects is one which includes the road links with the potential to cause a short-term change in noise of more than 1.0 dB(A). This typically corresponds to roads links where the traffic flow changes by at least 25%. This change also needs to occur across the 18-hour period from 6 am to midnight. Therefore, notwithstanding the apparently erroneous interpretation of the traffic modelling results, a change of 10.3% in an isolated hour is not sufficient for a road to be included in the road noise study area.

Conclusion

In conclusion, none of the matters raised in LBTH's letter are considered to be Regulation 25 issues which would entail the provision of further information and/or a revision of the ES. Many of their comments misinterpret the nature of the S73 application and/or misinterpret the EIA process and its findings. Moreover, had LBTH wished to comment on the scope of the EIA, they had the opportunity to do so when consulted on this matter in 2022. Your own professional consultants, led by LUC, have not raised the same issues or questioned the overall veracity of the ES.

We trust our response to the LBTH letter makes clear our position on the adequacy of the ES. However, should you require any further detail on any of the matters discussed, please feel free to contact me directly.

Yours sincerely,

On behalf of **Pell Frischmann Consulting Ltd.**



David Thomson
Sector Director - Environment