



TOWN AND COUNTRY PLANNING ACT 1990

Appeal by London City Airport Limited concerning refusal of Section 73 application (22/03045/VAR) to vary conditions attached to planning permission 13/01228/FUL, allowed on appeal in July 2016

**DEVELOPMENT OF LONDON CITY AIRPORT TO
ACCOMMODATE 9 MILLION PASSENGERS PER ANNUM**

Local Planning Authority Reference: 23/00059/REF

Planning Inspectorate Reference: APP/G5750/W/23/3326646

Date of Inquiry: 5 December 2023 – 2 February 2024

CLOSING STATEMENT

of

HACAN EAST

2 February 2024

INTRODUCTION

1. On the opening afternoon of the Inquiry, Sir Stephen Timms, MP for East Ham, described how it had “always been part of the deal” that London City Airport (“**LCY**”) would close for 24 hours at weekends between Saturday lunchtime and Sunday lunchtime. Having negotiated the original planning conditions as chair of the London Borough of Newham’s (“**LBN**”) planning committee in the 1980s, he explained that the weekend curfew was the price that the airport paid for being situated in the middle of a densely populated residential area.¹ He characterised the current appeal proposal as “a fundamental breach” of the understanding that the airport reached with the community from its inception.²
2. HACAN East has made it clear throughout its evidence to the Inquiry that LCY is unlike other UK airports and the current appeal proposal unlike other recent aviation expansion proposals in a number of key respects. LCY relies more heavily on business passengers than any other UK airport.³ Its passengers also have higher average household incomes than any other airport serving London, despite LCY being situated in an area with high levels of deprivation.⁴ Its flightpaths are unusually concentrated and feature an unusually long level flight segment, with arriving aircraft during easterly operations passing over South East London at 2000ft for many kilometres. This expansion proposal also falls to be determined in accordance with Policy T8 of the 2021 London Plan and the local planning policy context is therefore different from other recent aviation appeals.
3. National aviation policy is clear that, while the Government is broadly supportive of aviation growth “within a framework which maintains a balance between the benefits of aviation and its costs”,⁵ it is for planning decision makers to weigh those

¹ Data from the Office for National Statistics shows that 11 of the 20 most densely populated local authority areas in England are overflowed by London City aircraft (CD 3.7.31).

² INQ-04, Sir Stephen Timms MP Statement.

³ Civil Aviation Authority, Passenger Survey Report 2022, Table 2: Country of Residence and Journey Purpose of terminal passengers <https://www.caa.co.uk/data-and-analysis/uk-aviation-market/consumer-research/departing-passenger-survey/passenger-survey-report-2022/>

⁴ INQ-19 CAA Passenger Survey - Income data for airports serving London (Gatwick, Heathrow, London City, Luton & Stansted worksheets).

⁵ CD 3.5.1, §5, pg 9.

benefits and costs in relation to individual proposed expansion schemes. In so doing, they should take into consideration a scheme's environmental and economic impacts and any proposed mitigation measures.⁶

4. HACAN East's view that the economic benefits of the proposal have been overestimated has been vindicated by the evidence. Its evidence has also shown that the environmental costs of the proposal would be more significant than the Appellant acknowledges, and the mitigation proposed to meet those costs is both inadequate and uncertain. Both in respect of the anticipated socio-economic benefits of the appeal proposal and its predicted environmental harms, the Appellant's case is shot through with uncertainty and characterised by a pattern of convenient assumptions. Nothing in the evidence before the inquiry justifies the "fundamental breach" of the understanding between LCY and the community that Sir Stephen Timms identified.
5. These closing submissions are structured to reflect the order of the evidence heard by the Inquiry as follows: (1) the socio-economic impacts of the appeal proposal; (ii) the effects of the proposal on noise; (iii) compliance with development plan policies, including in respect of climate change; and (iv) the planning balance.

ECONOMY

Business passenger growth

6. The Appellant has taken pains to frame the appeal proposal as a leisure-focused expansion throughout much of its evidence. Mr Bashforth characterised it in this way multiple times during his oral evidence, the Need Case states that adjusting operating restrictions is likely to result in airline operators changing their Saturday focus to "leisure type routes",⁷ and in Ms Congdon's recent note, responding to Dr Chapman's additional note (INQ-25), she referred to the "more extensive portfolio of leisure services" that the airport would be able to provide if permitted to expand.⁸

⁶ CD3.5.2, §1.39, pg 11.

⁷ CD1.60, §§5.40–5.41, pg 65–66, PDF pg 70–71.

⁸ INQ-28, §18, pg 4.

7. However, Dr Chapman's INQ-10 document, which analysed the data in the Appellant's response to the GLA Stage 1 Report, indicates that LCY in fact predicts a higher proportion of business passenger growth by 2031 in the with development scenario than in the do minimum scenario.⁹
8. When questioned on this during her oral evidence in chief, Ms Congdon stated that the proposed expansion of the airport would allow it to put on a number of new business routes and that "creates opportunities for business passengers who can't use London City at the moment to use London City, so the with development case tilts slightly towards business passenger growth being a bit stronger proportionately than leisure passengers."
9. This inconsistency in the extent to which the appeal proposal is anticipated to be leisure- or business-passenger orientated is a symptom of the broader ambiguity from the Appellant regarding what the appeal proposal is actually *for*. To quote Mr McFadden in oral evidence, what was provided to LBN was a *business* case, not a need case. LCY has been inconsistent regarding whether the appeal proposal is primarily designed to incentivise leisure or business passenger growth and has not provided convincing evidence that it is actually required in order to do either.
10. Even if there were greater certainty that the appeal proposal is primarily intended to be a leisure-focused intervention, increasing connectivity for business passengers remains a key part of the Need Case document.¹⁰ This is significant for three reasons:
 - a) First, because there is every reason to think that the projected growth in business passenger numbers will not materialise given past trends in business passenger growth and substantial structural shifts in the economy affecting underlying demand for business travel.

⁹ INQ 10, by reference to the data in CD 4.2.3 Appendix 2.

¹⁰ Need Case CD 1.60, §6.35, pg 80, PDF pg 85; reflected in Ms Congdon, Main Proof, §6.5.2 pg 55, PDF pg 60.

- b) Second, because airport capacity constraints tend not to materially impact business passenger numbers, even where underlying demand growth is strong. DfT analysis in its 2017 aviation forecasts, to which Dr Chapman drew attention in his evidence, indicated that business passengers can be expected to continue to fly regardless, even in a capacity-constrained scenario, due to their greater willingness to pay.¹¹
- c) Third, because even if this expansion scheme did produce net additional business passenger growth, Dr Chapman has demonstrated that the consequent GVA growth projections are based on a substantively outdated model concerning the relationship between business passenger growth and GVA growth.
11. Table D.6. of the Need Case presents the growth rates of different market segments assumed within the Appellant's central forecast.¹² As Dr Chapman highlighted in his proof and in oral evidence, the trajectories shown for travel for business purposes are not credible.¹³ The Need Case predicted that business travel demand would have recovered to pre-pandemic levels by 2023 and increased to 20% above pre-pandemic levels by 2025. The reality is very different. Right now, legal restrictions due to Covid have been lifted almost everywhere, GDP is back to pre-crisis level in real terms, and leisure air travel has bounced back, but demand for business travel has not. It remains 28–31% down on 2019, as the Appellant's own evidence shows.¹⁴
12. As regards future growth in business passenger numbers, Dr Chapman's report, *Losing Altitude*, demonstrates that business travel has not merely slowed in recent years or in response to the pandemic; it has never recovered from the 2007/08 financial crisis.¹⁵ A chunk of the market simply never returned after 2008, and

¹¹ CD 3.5.17, §7.12, pg 99.

¹² CD 1.60, Table D.6, pg 118, PDF pg 123.

¹³ Dr Chapman, Main Proof, §§4.1-4.4, pgs 15-16.

¹⁴ Ms Congdon, Main Proof, §4.2.5, pg 20, PDF pg 25.

¹⁵ CD 3.5.11 pg 10 figure 3.

another chunk may well not return after Covid. Business passenger projections for the present appeal proposal are based on a predicted demand model which simply does not account for the structural shift which occurred in the business travel market after the financial crisis. The Appellant did not in fact challenge this analysis.

13. In the aftermath of the Covid pandemic, with remote working and teleconferencing more ubiquitous than ever before, there is no reason to suppose that this 17-year trend will suddenly reverse. This is not even taking into account the potential for substitution of passengers who may prefer to use newly upgraded rail routes, such as the Eurostar service to Amsterdam, an effect which the Appellant did not model. Ms Congdon suggested the decision not to model rail was made because trains are not competitive with flights on routes taking longer than 3 hours. This is contradicted by the success of Eurostar's recently launched direct routes to Amsterdam and Rotterdam
14. Even if business travel growth were to exceed all expectations and return to pre-financial crisis levels or above, the relationship between business passenger growth and GDP is much less clear cut than it once was. Generally, it is understood that business passengers produce greater economic benefits than leisure travellers, but Dr Chapman has highlighted the dangers inherent in an uncritical reliance on the statistical relationship between business passenger numbers and economic output presented in Table 6.7 in the Need Case.¹⁶
15. In particular, he noted that the elasticity used by the Appellant, developed by Oxford Economics in 2013, relies on input data spanning 1980–2010, a period of booming business travel growth overall.¹⁷ The other surveys cited by Ms Congdon in her rebuttal proof at §3.4.4 also rely on old data (InterVISTAS, PWC).
16. In the UK, the number of business air trips per £million real GDP has been declining since at least 2006. In her oral evidence Ms Congdon presented this as a positive – suggesting that it indicated that each individual business air trip generated a

¹⁶ CD 1.60, Table 6.7, pg 83, PDF pg 88.

¹⁷ CD 3.5.11, pg 27.

greater increase in GDP than previously. No evidence was presented to support this causal inference. Indeed, in direct contradiction of this assumption, Ms Congdon herself appeared to accept that since the pandemic a chunk of the business travel market has dropped away as the relative advantage of air travel over digital communication had declined for certain routine business functions. This supports the conclusion drawn by Dr Smith and Dr Chapman that rapid advances in digital communication and an accompanying business culture shift have reduced the relative benefits which arise from business air travel.¹⁸ Taken together, this demonstrates that the Appellant's evidence is unreliable. At the very least, a more up-to-date analysis than the Oxford Economics work should have been used.

Displacement and substitution

17. The Appellant assumes both 100% displacement and 0% displacement at the same time – on the one hand assuming 100% displacement of aircraft, and therefore climate impacts, and on the other 0% displacement of jobs and GVA.
18. In oral evidence Ms Congdon suggested that there would be effectively 100% displacement of air traffic and 95% displacement of passengers. These assumptions were not made clear anywhere in the evidence submitted by the Appellant before the Inquiry and Ms Congdon accepted in cross-examination that the underlying calculations had not been provided. Ms Congdon's response to Dr Chapman's additional note indicates that her carbon costing estimate in fact assumes 93.5% displacement of air traffic. Meanwhile, the Need Case effectively assumed 0% displacement of jobs within the local study area.¹⁹
19. These figures do not stack up. In every case, the underlying assumptions are those which favour the Appellant's case and are left opaque and uninterrogated within its written evidence.
20. The implications for the claimed benefits of the scheme are significant:

¹⁸ CD 3.5.11, pg 30 and Figure 13

¹⁹ CD1.60, §4, pg 136, PDF pg 141.

- a) First, the assumption of over 90% displacement of passengers is central to the extent of the benefit to travellers in quicker travel times to LCY. That one assumption drove a large part of the Appellant's case and formed a high proportion of its overall calculation of the scheme's net present value ("NPV").²⁰ Yet it is never actually justified.
 - b) Second, the Appellant has never acknowledged the impact of the high passenger displacement estimate on the anticipated social welfare benefits of the appeal proposal. More than 90% displacement of passengers means that only a small minority of anticipated new LCY passengers in the development case scenario will actually enjoy the benefits of flying as a result of the appeal proposal. The vast majority would travel anyway regardless of whether the proposal is permitted or not.
 - c) Third, the Appellant has assumed 0% displacement of jobs within the London study area, but if 93.5% of passengers would have flown anyway on the do minimum case, then the majority of jobs predicted to be created by the appeal proposal would likely have been created within London in any event.
21. Regarding carbon costs, the assumption of near total displacement of air traffic is not credible. Overall passenger numbers in the UK have grown rapidly over time, and the forecasts in this application are specifically predicated on there being significant future demand growth across the economy. Unlocking further growth with new capacity means additional air travel on new planes.
22. This is supported by international air traffic trends. As Ms Congdon highlighted repeatedly in her oral evidence, the airlines flying from London are international airlines and are subject to international commercial realities and trends, including the rapid growth of the global commercial aircraft fleet. There is no logical basis for

²⁰ Ms Congdon, Main Proof, Table 6.9, pg 60, PDF pg 65.

assuming that expansion at LCY does not ultimately increase the global demand for aircraft and the distance travelled by the global fleet.

Employment

23. Previous expansion applications at LCY have failed to deliver projected employment gains. In evidence in chief, Dr Chapman explained that the 2008 application for permission to expand capacity from 2.5mppa to 3.9mppa was estimated to support 2,277 FTE jobs but that the reported jobs numbers for 2019 in the 2021 LCY annual performance report tell a different story. The airport's passenger throughput in 2019 was 5.1mppa, over 1 million more passengers than had been permitted by the earlier planning permission.²¹ Yet the FTE jobs figure for the same year was 2,036, some 240 below the FTE jobs prediction for 3.9mppa.
24. In her rebuttal at §3.5.6, Ms Congdon acknowledged that "It was recognised in the original CADP1 Application that the growth in employment anticipated in 2008 had not fully materialised" but attributed this to "an unforeseen step change in productivity due to restructuring of functions (e.g. increased automation) following the global financial crisis."²² The Appellant's evidence does not contemplate whether the aftermath of the pandemic may have given rise to another "step change". HACAN East contends that there is every reason to doubt whether projected employment gains from the present appeal proposal will materialise.
25. In respect of indirect and induced jobs in particular, the assumption of 0% displacement is likely to have significantly influenced the assessment of predicted employment growth. In his evidence in chief, Dr Chapman gave the example of jobs in factories making food for planes. These jobs are still likely to be created regardless of whether the ready-meals produced are consumed on aircraft flying from LCY or from Stansted, but the Appellant has not controlled for this factor. In re-examination Ms Congdon stated that a low multiplier had been used when modelling how much of the supply chain for LCY was likely to be localised and

²¹ CD 9.1, pg 2.

²² Ms Congdon, Rebuttal Proof, pg 16, PDF pg 19.

asserted, without evidence, that “it's unlikely that that local supply chain would be in turn feeding Stansted.”

26. Dr Chapman also noted that many of the new jobs projected to be created by the appeal proposal are in retail and hospitality, and that these sectors are especially likely candidates for displacement. If a potential LCY passenger did not fly and instead went to work, they would still buy their morning coffee. They would just buy it on their way to the office rather than at the airport.

Equity

27. The Appellant has repeatedly touted the support in national aviation policy for the “broad social benefits” of flying, even where it leads to an overall economic deficit from outbound leisure tourism.²³ However, *Losing Altitude* shows that pre-pandemic an estimated 70% of all flights were taken by 30% of the population, with individuals aged 19 and younger notably underrepresented in the flying group at just 6.4%.²⁴ This is not just “Dr Chapman’s view”, as Ms Congdon suggested. It is evidenced by CAA data. This includes the undisputed CAA passenger income figures provided to the Inquiry, which show LCY passengers are far wealthier than those travelling from other airports serving London.²⁵
28. Nevertheless, the Appellant has undertaken no analysis of the equity of the socio-economic impacts of the appeal proposal, with Ms Congdon stating during cross examination that she did not consider it to be necessary. It is HACAN East’s case that, far from a broad social benefit, what is offered by the appeal proposal is in fact a narrow social benefit, mainly enjoyed by a group of older, wealthier frequent fliers.

²³ All parties are agreed that in purely economic terms, outbound leisure travel takes more money out of the UK than it generates within it.

²⁴ CD 3.5.11, pg 19, Section 3.4.

²⁵ INQ-19: CAA Passenger Income Data; Confirmed at INQ-27, pg 4, §18 that these figures are not disputed.

29. If the appeal proposal is permitted then, statistically, the average Newham resident annoyed by new noise from LCY aircraft on Saturday afternoons will earn less than the passengers flying above them.

WebTAG

30. Dr Chapman was very clear that WebTAG is not a binary yes or no tick box exercise, but rather a best practice guide that allows the socio-economic impacts of government and non-government aviation interventions to be more fully understood.
31. The Appellant has obviously appreciated its worth too, since they have utilised WebTAG methodologies and referred to the Green Book at points in their evidence, where they deemed them to be useful or convenient (notably in relation to carbon emissions). Ms Congdon accepted in cross-examination that WebTAG is not something that is solely to be used by the DfT and may be useful for other appraisal practitioners.
32. In fact, all parties are now agreed that it is open to the Inspectors and the Secretary of State to take the evidence on the monetised environmental impacts of the proposal into account when making their decision. Along with the updates to the TAG guidance itself detailed in Dr Chapman's main proof at pages 6–9, this agreement moves the position on substantially from previous airport expansion inquiries; most notably Bristol.
33. In simple terms:
- a) when the noise impact is monetised (on a conservative basis),²⁶ the scheme creates a noise cost of -£165 million NPV over the assessment period. This is plainly a significant cost, which, on its own, reduces the benefit of the scheme from £371 million to £206 million;

²⁶ INQ-25, §§4-5.

- b) when the carbon impact is monetised, the unmitigated carbon cost (excluding non-CO₂ impacts) is -£134 million NPV over the assessment period – again, a significant cost. When non-traded climate impacts are accounted for (in this case non-CO₂ impacts) the scheme NPV turns negative, at -£272m.
34. When monetised noise impacts and unmitigated carbon impacts are taken into account, the majority (80%) of the scheme's welfare benefit claimed by the Appellant in the Need Case is removed: it drops from £371 million to £71 million. This significantly reduces an aspect of the benefit relied on by the Appellant.
35. Even though all parties now agree it is open to the Inspectors and the Secretary of State to take this evidence on the monetised environmental impacts of the proposal into account when making their decision, the Appellant has sought to cast doubt on the usefulness of a more extensive WebTAG appraisal, specifically the usefulness of the monetised impacts from noise – the key reason for refusal and central issue at Inquiry.
36. Mr Bashforth suggested at various points throughout his oral evidence that WebTAG was somehow too complicated for the Inspectors and the Secretary of State to take its outputs into account in their decision-making, that HACAN East was suggesting the introduction of some sort of alternative planning balance, and that Dr Chapman's inclusion of monetised noise impacts in his assessment of the overall economic value of the appeal proposal introduced an element of double counting. None of these assertions are credible.
37. Planning Inspectors and Ministers are well used to considering a range of highly complex and technical outputs from the EIA process as part of their consideration of whether developments should be permitted. The monetised outputs from the WebTAG Aviation Unit are no more complicated than any other technical dataset which an Inspector might find it useful to take into account. To suggest that WebTAG appraisal is uniquely complex or difficult to understand is simply smoke and mirrors.

38. Regarding the repeated suggestion that Dr Chapman has attempted to introduce an alternative planning balance, that too smacks of misdirection. It has obviously never been any part of HACAN East's case that WebTAG should be used for assessing noise or carbon impacts *as* noise or carbon impacts. Rather it provides an appropriate framework for assessing the impact of these societal harms on the overall economic impact of the scheme. It would be nonsense to suggest that WebTAG appraisal should replace EIA in the assessment of, for example, significant noise effects, and neither Dr Chapman nor HACAN East have ever suggested it. Insofar as the Appellant has sought to present HACAN East's case in this way, it is a misrepresentation.
39. Mr Bashforth accepted as a matter of general principle in cross-examination that non-compliance with a development plan policy is a harm in the planning balance in and of itself, and does not prevent the factors giving rise to that non-compliance from also being material harms due to their impacts out in the world. He also accepted that employment gains, for example, could be a planning benefit in their own right and also feed into an EIA assessment of beneficial health effects, as they have done in the Appellant's ES in the present case. Using the outputs of the monetisation process, in line with best practice WebTAG guidance, to fully understand the extent of the economic benefits of a planning intervention is no more 'double counting' than either of these examples.
40. Since the oral economic evidence concluded, Dr Chapman and Ms Congdon have both produced updated notes.²⁷ On monetisation of carbon impacts, it emerged the difference between the parties' calculations is primarily driven by differing approaches to the "discount rate", which Ms Congdon wrongly applied from 2019, but Dr Chapman correctly applied from 2024.²⁸
- a) Ms Congdon's updated note includes yet more additional discounting which she had not previously presented, purportedly comparing discounting from 2019 with discounting from 2024. HACAN East agrees that the discounting approach

²⁷ Dr Chapman's note is INQ-25. Ms Congdon's note is INQ-28.

²⁸ For the reasons given in INQ-25, §§9-10.

must be consistent. However, without the underlying data for the models on other inputs such as ticket prices, it is impossible to know how Ms Congdon arrived at the new figures. Overall, Dr Chapman's figures remain robust and credible.

- b) Ms Congdon dismisses the multiplier approach to modelling non-CO2 impacts as a sensitivity test, despite it being endorsed by DESNZ and within WebTAG guidance. HACAN East maintains that this sensitivity test is highly relevant.
- c) On noise, Ms Congdon has suggested that Dr Chapman ought to have used Tables 8-21 and 8-25, showing assorted source point data for 12 sites, all of which fall within the 57dB contour,²⁹ rather than the overarching assessment of significant noise effects in Mr Greer's Appendix 1. However, these data points are not weighted by population and cannot therefore form the basis for a reliable assessment of the monetised noise impacts on the relevant population as a whole. As shall be seen further in considering the noise impacts of the proposal, the focus on these specific data points also reflects a broader absence of consideration for the impacts of the appeal proposal on people living within the 51dB and 54dB contours, since all the sites proposed by Ms Congdon are situated within the 57dB daytime contour.
- d) There are two further factual inaccuracies in Ms Congdon's note. The first is the claim in paragraph 13 that *"There are also plainly no individuals who fall within the band (1.0-1.9 dB) as Dr Chapman suggests"*. This is not correct. Comparing Tables 8 and 9 of Mr Greer's Appendix 1 with Tables 7.15 and 7.16 in his main proof clearly shows that some 15,050 individuals fall within the 1.0-1.9 dB impact range at nighttime, and some 159,800 individuals fall within this range at the weekend. Second, Ms Congdon states that *"The WebTAG Noise Workbook is clear that, for aviation, only monetisation of noise above 51 dB LAeq,16hr day and 45 dB LAeq,8hr night should be included in line with government policy"*. In fact, the WebTAG Noise Workbook for Aviation includes impacts in the daytime 45-51 dB range in the central analysis. Impacts in this range are excluded in

²⁹ CD 1.15, Tables 8-21 and 8-25, pgs 8-41, 8-43, PDF pgs 43, 45.

what the DfT clearly identifies as a “sensitivity test”. In the present circumstances, the Appellant has not provided data on impacts in the 45-51dB daytime range. The “sensitivity test” scenario has therefore been adopted by Dr Chapman in his additional note, but is likely to be an underestimate of the true impact.

41. To conclude on the socio-economic impacts of the appeal proposal:

- a) The projected growth in business passenger numbers is highly unlikely to materialise. Absolute business passenger numbers have never recovered to their 2006 levels in the years since the financial crisis. There is no reason to suppose they will do so in the aftermath of a further structural shift in the market caused by the Covid-19 pandemic.
- b) The Appellant’s assumptions around displacement are opaque and inconsistent – assuming near total displacement of air traffic and carbon impacts on the one hand, and no displacement of employment on the other.
- c) Previous projections around employment growth at LCY have failed to materialise. Past trends and optimistic assumptions around displacement mean that the claimed employment benefits of the current appeal proposal are likely to be an overestimate.
- d) Far from providing a broad social benefit, the appeal proposal would offer a narrow social benefit to a group of older, wealthier frequent fliers, while simultaneously exposing residents in one of the most deprived areas of London to a material new source of noise nuisance.
- e) WebTAG provides a useful framework for assessing the monetised environmental impacts of the appeal proposal, including the monetised impacts of noise – the key reason for refusal. There is no debate that it is open to the Inspectors to take the results of this monetisation into consideration and to do so would be in line with best practice guidance from the DfT.

NOISE

42. HACAN East's case on noise has two main components:
- a) First, that the appeal proposal would have a demonstrable adverse impact on people living outside of the conventional study area and that this impact ought to be taken into account as a material planning consideration.
 - b) Second, that the proposed mitigation offered by new generation aircraft is far from certain and that large numbers of people living *within* the study area may be more adversely affected by aircraft noise than predicted by the Appellant in the ES.
43. HACAN East also agrees with LBN's primary case that the removal of the Saturday afternoon curfew would have an obvious and substantial adverse impact on residential amenity, which would constitute a significant adverse effect in EIA terms and a material harm in the planning balance.
44. The wide-ranging effects of noise on residents within and outside of the noise contour has been reflected in statements from interested parties throughout the Inquiry. Local residents have described losing sleep and experiencing increased anxiety (Elizabeth Geary); feeling embarrassment when entertaining friends in the garden (Jackie Lagler, Thamesmead); closing doors and windows even in warm weather (Anne Sharpe, Forest Hill); having to pause conversations while the aeroplanes take off, and missing dialogue while watching TV (Chris Joseph, Beckton). One resident had spent over £17,700 soundproofing his home (Radul Radulov, Bow). Another, who rented privately, had tried to persuade his landlord to take advantage of the Appellant's sound insulation scheme but his landlord had not done so (Rob Callender, Silvertown).

Noise impacts outside the average mode contour

45. As highlighted by the evidence of Mr Thornley-Taylor and Mr McFadden for LBN, as well as by HACAN East, it is plain that noise from LCY aircraft affects residents living

outside the study area. This is reflected in the objections to the appeal proposal received from 1700 individuals who commented on the original planning application, MPs and councillors representing areas as far afield as Wanstead, and eight other London boroughs apart from LBN; a quarter of the total for the capital as a whole.

46. The Appellant has repeatedly stressed that national aviation and noise policy does not require the assessment of noise impacts below 51dB and suggested that impacts below this level are therefore irrelevant to the decision on the appeal proposal. This ignores the obvious evidence of widespread annoyance from aircraft noise beyond the 51dB contour, in the very particular circumstances which pertain to LCY.
47. HACAN East accepts that national policy does not require an assessment of impacts below 51dB to be carried out as part of the EIA process. However, neither does it prohibit either the inclusion of non-standard metrics as part of the EIA assessment of significant effects, nor the consideration of noise impacts below 51dB as a material planning consideration. Mr Greer ultimately accepted in cross-examination that national policy does not prevent the Inspectors or the Secretary of State from considering noise impacts at lower levels of exposure. Given the very particular circumstances which pertain to LCY, these noise impacts are an obviously material planning consideration.

Concentration of flight paths

48. Two distinctive features of LCY's flightpaths create a particularly high risk of annoyance from aircraft noise for residents outside the average mode contour living beneath them. First, as regards the easterly mode arrivals flightpath, the long level flight segment means that planes fly at 2000ft for many kilometres above South East London before they reach the base leg turn. This shelved segment of the arriving flightpath includes elevated outdoor spaces such as the Horniman Gardens, where aircraft noise is especially noticeable.

49. Second, the concentration of LCY's flightpaths in 2016 has had a clear and lasting impact on annoyance caused by LCY aircraft. As Mr Stewart explained in his proof of evidence, the concentration of the flightpaths after the CADP1 application was submitted but before it was allowed on appeal in July 2016 resulted in at least a four-fold increase in complaints to LCY.³⁰ Although the total number of people overflown fell, the impact on those under the concentrated flight paths increased. Concentration was a seismic change. People complained about the concentration of the flightpaths in 2016 and, as has been clear from statements to the Inquiry from interested parties and elected representatives, they are still complaining now, a response which belies the suggestion that people are only annoyed by new or additional sources of aircraft noise for one or two years before becoming habituated.
50. In his evidence Mr Stewart described a conversation with an MP who explained that planes now fly 'down her street'. Mr Greer suggested in cross-examination that residents concerned about new flights on Saturday should engage in consultation process for the redesign of flightpaths, but that provides no assistance to affected residents at risk of losing their Saturday afternoon respite in the here and now.

The value of predictable respite

51. The concentrated nature of LCY's flightpaths makes the value of predictable respite for overflown residents all the greater. Mr Stewart described the high value placed on the Saturday afternoon curfew to supporters of HACAN East living across and beyond the study area, noting that supporters describe planning events specifically for Saturday afternoons to guarantee they will not be affected by aircraft noise.
52. Mr Greer and Mr Bashforth both accepted in cross-examination that, while current easterly operations account for only 30% of the year on average, it is an unpredictable 30%. They also accepted the general proposition that there is value in predictable relief from overflight noise.

³⁰ Mr Stewart, Main Proof, §3.7, pg 10.

Importance of complementary metrics

53. Mr Greer drew attention in his evidence to the fact that SoNA concluded that “No evidence was found to suggest any of the other indicators correlated better with annoyance than LAeq,16hr.”³¹ HACAN East does not dispute the appropriateness of LAeq 16hr as the primary metric for the assessment of significant noise effects. However, as Mr Stewart indicated in his evidence, in light of the very particular features of LCY, complementary metrics are highly useful in the present case to capture full impact of proposed changes.
54. Several representations from interested parties also highlighted the dangers of reliance solely on the conventional metric, highlighting that that is not how they perceive noise on the ground. As Dr Keith MacLean noted, in a statement on behalf of the New Providence Wharf Leaseholders & Residents Association, “a man with his head in an oven and his feet in a freezer” is not a comfortable temperature, but might be found to be so on average.
55. Of particular relevance to LCY is the stark disparity in the size and population counts between the average mode and easterly mode contours. Tables 8.3.17 and 8.3.79 in Appendix 8.3 to the ES show that in 2031 in the DC scenario, the average mode contour is forecast to be 22.7km², while the easterly mode contour is forecast to be 44.1km².³²
56. Meanwhile the forecast population count for the average mode contour, including permitted developments, in Table 8.3.20 is 302,250 people in 2031 on the DC scenario.³³ For the easterly mode contour, Table 8.3.82 shows an estimate of at least 409,850 people included permitted developments.³⁴ However, footnote 5 explains that permitted development data was not available for the entirety of the easterly mode contour so this figure is likely to be an underestimate.³⁵ Thus the easterly mode contour for LCY is forecast to be twice as large as the average mode

³¹ Mr Greer, Main Proof, §3.7.12, pg 19, PDF pg 20.

³² CD 1.39, PDF pgs 21, 37.

³³ CD 1.39, PDF pg 21.

³⁴ CD 1.39, PDF pg 38.

³⁵ CD 1.39 PDF pg 30.

contour by 2031 in the DC scenario and to be home to at least 100,000 more people and probably more.

57. The easterly mode contour maps also provide a stark visual representation of LCY's concentrated flightpaths and low-level flight for many kilometres over South East London, showing an extended C-shaped curve within which residents are exposed to noise impacts above the LOAEL during easterly operations. For all of these reasons it would have been beneficial for LCY to factor single mode contours into assessment of the significance of the noise effects of the appeal proposal. In the absence of such an assessment, it is submitted that the data on the single mode contours which *is* presented in Chapter 8 and Appendix 8.3 of the ES and the representations from residents living within those contours should be taken into account as a material planning consideration.
58. The other two metrics which Mr Stewart suggested would be useful for the Inspectors and Secretary of State to consider were the N65 contour, and the cumulative impact on residents overflowed by aircraft from both LCY and Heathrow. HACAN East suggests that the N65 contour data is especially relevant in a context where the primary concern of residents is regarding the number of new flights on a Saturday afternoon. Meanwhile the effect of Heathrow aircraft in combination with LCY was apparent from many of the interested party representations to the Inquiry.

Uncertainty of proposed mitigation

59. The promise of quieter planes is absolutely central to LCY's case. It would also appear that this promise has cut through to members of the local community. Natasha Hart, CEO of Newham All Star Sport Academy, who made a representation in support of the appeal proposal, was asked by Inspector Searson about the potential impact of Saturday afternoon aircraft noise on outdoor recreation. She stated that she had attended several meetings when LCY first presented their proposal and that BA had promised to make quieter planes; "so then I thought why not".

60. The 2019 summer edition of LCY's newsletter initially claimed that the new generation Embraer E190-E2 was 14dB quieter than the Embraer E190.³⁶ The Benefits and Mitigation statement included a more modest claimed reduction of 3.2 dB for arrivals and 5.4 dB for departures.³⁷
61. Before interrogating the adequacy of the proposed embedded mitigation two preliminary points must be addressed. The first concerns the 'burden of proof' and the second the difference between absolute and perceived noise levels.
62. In *Satnam Millenium Ltd v SSHCLG* [2019] EWHC 2631 (Admin), Sir Duncan Ouseley dealt with the question of legal and evidential burdens in planning decision-making. He held that the imposition of a strict legal burden of proof in planning inquiries is inapt *"because of the nature of the Inspector's task"*, as what is required is an *"assessment [...] on the basis of all of the information available."*: §102. He went on, however, to address the evidential burden and found that:
- "There was no legal burden as such; rather it was simply in the interests of an applicant, who obviously wished to succeed, to provide the information necessary to enable a favourable decision to be made. The Inspector Training Manual is to the like effect in relation to decisions on the planning merits. The burden of proof was relevant to the "legal grounds of appeal" in enforcement notice appeals, which essentially are concerned with past events, but that was on the balance of probability, and the criminal burden of proof should not be referred to at all. However, at hearings, Inspectors are advised that, in judging how the parties' arguments stand up when tested, "the burden of proof generally lies with the party who made the point." (emphasis added)*
63. At §107, Ouseley J highlighted the inappropriateness of the imposition of a 'beyond reasonable doubt' standard of proof in determining points in an inquiry. However, he accepted at §108 that some policies can, and do, require the developer to produce evidence to a standard which meets the objective of showing that a particular adverse effect will not occur, or is very unlikely to occur. He endorsed a precautionary approach about where risk of error should lie – the more serious the risk of an adverse effect occurring, the greater the certainty or degree of precaution required in the applicable evidential standard.

³⁶ CD 3.7.46, pg 6.

³⁷ CD 1.66, pg 18.

64. In the context of the present appeal, Policy D13 of the London Plan 2021 sets out the Agent of Change principle, which places the onus for mitigating the impacts of new noise or nuisance generating development on the developer.³⁸ Policy T8(B) provides that *“the environmental and health impacts of aviation must be fully acknowledged and aviation-related development proposals should include mitigation measures that fully meet their external and environmental costs, particularly in respect of noise, air quality and climate change.”*³⁹
65. At a national level, MBU provides general policy support for airports beyond Heathrow making best use of their existing runways but provides that *“As part of any planning application airports will need to demonstrate how they will mitigate against local environmental issues, taking account of relevant national policies.”* (Emphasis added).⁴⁰ It explicitly does not prejudge individual applications or provide carte blanche for expansion where local environmental impacts cannot be satisfactorily mitigated.
66. Thus, caselaw, national and local policies are agreed that the onus for mitigating the adverse environmental impacts of airport expansion proposals and providing sufficient evidence to demonstrate the adequacy of that mitigation lies upon the Appellant. In the present circumstances, that means the burden is on LCY to demonstrate that the proposed embedded mitigation is as effective as claimed, not on HACAN East to prove that it is not.
67. As for the extent to which any reduction in noise levels is likely to be noticeable or meaningful to residents on the ground, the CAA’s webpage on ‘Measuring and modelling noise’ notes that “a change of 3dB has been defined as the minimum perceptible under normal conditions while a change of 10dB corresponds to roughly a doubling or halving of loudness”.⁴¹ Mr Greer accepted in cross-

³⁸ CD 3.3.1, pg 150, PDF pg 165.

³⁹ CD 3.3.1, pg 438, PDF pg 453.

⁴⁰ CD 3.5.3, §1.26, pg 8, PDF pg 9.

⁴¹ Civil Aviation Authority, ‘Measuring and modelling noise’, [https://www.caa.co.uk/consumers/environment/noise/measuring-and-modelling-noise/#:~:text='A%2Dweighted%20decibels'%20\(at%20low%20and%20high%20frequencies.](https://www.caa.co.uk/consumers/environment/noise/measuring-and-modelling-noise/#:~:text='A%2Dweighted%20decibels'%20(at%20low%20and%20high%20frequencies.)

examination that 3dB was generally about the minimum perceptible in normal conditions, though some people might be able to perceive smaller variations.

Reliability of Citizen Science Study

68. Dr Nold's Citizen Science Study found that the difference between old and new generation Embraer aircraft from six monitoring stations within the easterly mode contour but outside the average mode contour was 1.7dB on average.⁴² He also found that there was considerable variation between individual aircraft, with occasional reports from citizen researchers of very loud whistling whale-like noises from Airbus A220-100 aircraft, and that the new generation planes were not meaningfully quieter on average during overflight than older aircraft.⁴³
69. During his oral evidence, Dr Nold's addressed the results of the Bickerdike Allen survey, carried out using class 1 sound level meters and published by LCY in November 2023, and explained how they intersected with the findings of his study. In particular, he highlighted that the Lambeth monitoring site in the new study recorded a difference of 1.9dB between the Embraer E190 and E190-E2 on average.⁴⁴ This is very close to the 1.7dB that Dr Nold found for the same aircraft and, like his monitoring sites, the Lambeth site lies within the easterly mode contour but outwith the average mode contour.
70. Thus, the results of the new survey serve to validate Dr Nold's results for the two generations of Embraer aircraft and increase the confidence that the Inspectors can place in his other findings, for example concerning the variation between different models of aircraft measured from the same monitoring sites. Contrary to suggestion by Mr Greer that this variation was in some way abnormal or undermined Dr Nold's findings, we can see from other empirical studies cited in the Citizen Science Study that it is in fact entirely consistent with real world datasets for aircraft noise measured across Europe.

⁴² CD 3.7.20, PDF pg 11, Table 3.

⁴³ CD 3.7.20, PDF pgs 10–14.

⁴⁴ CD 3.7.55, pg 7, Table 1.

71. In Section 5.4 of the Citizen Science Study, Dr Nold addresses the “notable discrepancies in the decibel measurements of the same aircraft” and notes that:

“This is in line with other empirical studies such as Simons and colleagues who identify that “variability in noise levels for flyovers of the same aircraft type can be as large as 12 dB, hampering noise assessment around airports” (Simons et al., 2015, p. 1625). The study proposes that variable atmosphere affects the acoustic propagation and variations in the aircraft emitted noise are the two main contributors to this variability.”⁴⁵

72. The *Simons et al.* paper, cited by Dr Nold and included within the core documents before the Inquiry, argues that most of the noise variability is due to thrust settings and concludes that:

“[T]o solve at least part of the airport noise assessment problem related to the large noise level variation observed for flyovers of the same aircraft type, it is concluded that it is necessary to incorporate a more accurate engine setting of the aircraft into models for noise contour calculations around airports.”⁴⁶

73. Thus, these measurement variations are to be expected in on-the-ground datasets recording noise levels from aircraft during overflight. Far from undermining the credibility of the study, the 13dB variation illustrates one of its central findings; that on the ground measurements from new generation aircraft demonstrate great variability, even within the shelved ‘stable’ part of the flightpath, which is obscured by the use of averaged metrics in the modelled data. HACAN East suggests that the variation in absolute noise levels identified in the Citizen Science Study provides a valuable illustration of a crucial point; namely that there is a high degree of uncertainty around the noise impact that any single aircraft will make at a specific time and place.

74. It should also be noted that the data that Mr Greer pointed to in Table 4 in the Citizen Science Study was comparing measurements at quietest with the loudest locations, since measurement locations such as the Horniman Gardens are elevated and thus experience louder overflights.⁴⁷

⁴⁵ CD 3.7.20, PDF pg 13.

⁴⁶ CD 3.7.41, pg 16.

⁴⁷ CD 3.7.20, PDF pg 12.

75. If we look at the aircraft comparison between the two Embraer aircraft at each location, there is very little variability. The extent of the variation is very much in line with Dr Nold's overall 1.7dB figure. Overall, while the absolute measurements vary quite considerably, the relative comparison between the two aircraft is very close for each location.

Impact of empirical noise monitoring studies

76. The new Bickerdike Allen survey records data from LCY's fixed monitoring terminals which is much closer to the claimed figures in the Benefits and Mitigation Statement, finding a 3.4dB improvement in new generation aircraft for arrivals from NMT5, situated within the 57dB contour.⁴⁸ As noted previously, all the modelled locations included in Table 8-21 in the ES are also within the 57dB contour.
77. This leaves us in a position where we know what is happening within the 57dB contour, where there is likely to be a modest but meaningful improvement in noise levels from new generation aircraft, and we know what is happening outside the average mode contour in the long tail of the easterly mode contour, where the difference is likely to be imperceptible. However, between the two is a band of uncertainty. It is far from clear how quickly the perceptible benefits from new generation aircraft recorded at NMT5 drop off, since no empirical data for the 51dB and 54dB contours is before the Inquiry.
78. Analysis of the data presented in ES Table 8.3.20, showing summer day population counts including permitted development, shows why this band of uncertainty is so significant. Mr Greer confirmed in cross-examination that the figures in the relevant table were cumulative, so the number of people predicted to live within each 3dB contour band can be obtained by taking the figure for the lower limit of the band and subtracting the figure below it in the table.

⁴⁸ CD 3.7.55, pg 7, Table 2.

79. Thus we can see that some 130,400 people are forecast to experience noise impacts between 51dB and 53.9dB, representing 44% of the total population living within the LOAEL but outside the SOAEL. 90,800 are forecast to experience impacts between 54dB and 56.9dB – a further 31%. Therefore around three quarters of all the people living within the LOAEL but outside the SOAEL are concentrated in the outermost portion of the study area: the blue bands on the various average mode contour maps.

Population Counts for 3dB ranges within study area. Figures taken from ES Table 8.3.20: Average summer day population counts, including permitted developments, 2031 DC		
51 - 53.9 dB	130,400	44.4%
54 - 56.9 dB	90,800	30.9%
57 - 59.9 dB	48,850	16.6%
60 - 62.9 dB	23,600	8.0%
Total within LOAEL but outside SOAEL	293,650	100%

80. If the reduction in noise levels from new generation aircraft within the 51dB and 54dB contours is closer to the 1.9dB measured at Lambeth and the 1.7dB measured by Dr Nold than to the 3.4dB measured at NMT5, then three quarters of the people living between the LOAEL and the SOAEL thresholds may be subject to considerably more adverse noise effects than predicted. This uncertainty could easily have been avoided if Bickerdike Allen on behalf of LCY had carried out additional noise monitoring within the 51dB and 54dB contours, but such monitoring either has not been carried out or is not before the Inquiry.
81. On this point it is important to correct a misrepresentation of HACAN East's case which arose during re-examination of Mr Greer and Mr Bashforth.
82. The Appellant's opening statement recognised at §§78-79 that:

“the concepts of LOAEL and SOAEL introduced in the NPSE do not in themselves equate to findings of ‘significance’ in EIA terms. [...] The assessment of air noise impacts in the context of EIA has regard to both the absolute level of noise and the difference in noise levels between the development case and the ‘do minimum’ scenario”.⁴⁹

83. This is an important point, since it highlights that significant effects are not confined to the area above the SOAEL threshold. We are not only concerned with the baseline, but also with the magnitude of the change.
84. HACAN East has not disputed the Appellant’s estimate of the likely level of change for people living within the SOAEL, and therefore the probability of significant effects on these people in EIA terms. It is supported by empirical measurements for new generation aircraft from LCY’s fixed NMTs, demonstrating that they do provide the level of noise reduction claimed in the ES when measurements are taken close to the runway.
85. What is disputed is the effect of the proposed development on people living within the LOAEL. As set out above, the evidence from HACAN East’s Citizen Science Study, validated by the almost identical findings in the Bickerdike Allen survey, is that the new generation Embraer aircraft provide such a small reduction in noise levels during overflight that it would not even be perceptible in normal conditions. Yet no on the ground measurements have been taken in the 51dB or 54dB average noise contours (the light and dark blue portions of the noise contour maps) to see whether the benefits of the new generation aircraft are actually felt across the study area.
86. Thus, contrary to the suggestion put to Mr Bashforth by Mr Humphries in re-examination, HACAN East’s case has never been about “how far out the orange extends” on the noise contour maps. It is all about how big the impact is on the majority of affected residents living in the blue.

⁴⁹ INQ-03, pg 24.

Compensatory mitigation

87. As for the compensatory mitigation measures proposed to accompany the removal of the Saturday curfew, such as the enhanced sound insulation scheme, these are subject to some important limitations.
- a) First, they are only available within the 57dB contour. Outside of this contour, where the bulk of residents within the LOAEL live, individual residents would still be required to pay for any sound insulation measures, potentially at great expense, as the Inquiry heard from some of the interested parties.
 - b) Second, they will provide no benefit for private tenants if their landlords do not apply to LCY for financial assistance or consent to having the work done.
 - c) Third, they provide no benefit when residents are outdoors. Mr Greer's point regarding the amount of time that people spend indoors on average misses the subjective value of time spent in urban green space for health, wellbeing and general quality of life, as set out in the rebuttal proof of Mr Stewart.

PLANNING

The Development Plan

88. HACAN East agrees with LBN that Policies SP2 and SP8 of the Newham Plan are both relevant to the determination of the appeal, and that they should be interpreted to encompass impacts from noise on residential amenity and well-being, broadly construed, rather than as focusing narrowly on health impacts alone.
89. Policy SP2 requires development to "*attend to the environmental impacts*" of noise as a "*contributor[...] to health and well-being*". There is nothing in the text of the policy to suggest that it applies only where an adverse health effect has been formally identified as part of the EIA process. Similarly, Policy SP8 refers to the need

to “Avoid unacceptable exposure to [...] noise” as an “amenity or health impacting pollutant[...].”

Policy T8 and climate change

90. Policy T8(B) requires proposals for aviation expansion to “include mitigation measures that fully meet their external and environmental costs, particularly in respect of [...] climate change. Any airport expansion scheme must be appropriately assessed and if required demonstrate that there is an overriding public interest or no suitable alternative solution with fewer environmental impacts.”
91. The explanatory text at 10.8.8 provides that:
- “The aviation impacts on climate change must be fully recognised and emissions from aviation activities must be compatible with national and international obligations to tackle climate change. The implications for other sectors and other airports must also be fully understood when expansion proposals are brought forward, and aviation greenhouse gas emissions must be aligned with the Mayor’s carbon reduction targets.”*
92. In *R(Cherkley Campaign) v Mole Valley DC* [2014] EWCA Civ 567, [2014] P.T.S.R. D14, the Court of Appeal laid down the following principles at §16:
- a) When determining the conformity of a proposed development with a local plan the correct focus is on the plan’s detailed policies.
 - b) The supporting text is relevant to the interpretation of a policy to which it relates.
 - c) However, it is not itself a policy or part of a policy; nor does it have the force of policy.
 - d) A failure to satisfy an additional criterion referred to only in the supporting text does not constitute a failure to comply with the development plan, provided that a proposal conforms with the text of the plan policies. That applies even where the local plan states that the supporting text indicates how the policies will be implemented.

93. *New Dawn Homes v SSCLG* [2016] EWHC 3314 (Admin) summarised these principles as follows: “*the reasoned justification can affect the correct interpretation of a requirement contained in the policy, but it cannot impose an additional requirement outwith the policy itself*” [§36]. Holgate J further held that a piece of explanatory text may still be relevant to the interpretation of policy even if it crosses the line into inserting an additional policy requirement. The policy requirement will not have effect, but the text may still perform an interpretative function [§37].
94. Mr Bashforth also referred to another element of the explanatory text in his proof at §3.11 and accepted in cross-examination that it performed a useful function in helping to interpret the meaning of the policy.⁵⁰
95. There was disagreement between the planning witnesses over what the reference to “the Mayor’s carbon reduction targets” in the explanatory text referred to. It was suggested by Mr Bashforth it referred back to the overall statutory Net Zero 2050 target in London Plan Policy GG6. However, the explanatory text at §10.8.8 contains no cross reference to Policy GG6, nor does it specify any particular carbon reduction target.
96. Mr Farmer’s interpretation of this text was that it was sufficiently general that it could refer to any carbon reduction targets set by the Mayor, which would encompass the 2030 Net Zero target. This is the more credible interpretation.
97. In January 2022, the Mayor set out details of how he intended to meet the target of making London Net Zero by 2030 (a promise which formed part of his re-election campaign) in the policy paper ‘London Net Zero 2030: An Updated Pathway’.⁵¹ This document draws on a report commissioned by the Mayor and published on 18 January 2022 by Element Energy: ‘Pathways to Net Zero Carbon by 2030’.
98. The report concluded that, regardless of which of its proposed potential pathways to Net Zero the Mayor ultimately adopted “*Aviation emissions have a large impact on*

⁵⁰ Mr Bashforth, Main Proof, §3.11, pg 10, PDF pg 13.

⁵¹ CD 3.9.6

the level of residual emissions from transport [...]. As such, limiting growth of aviation as far as possible is a crucial action for achieving the Mayor's climate ambitions.”⁵²

99. The Appellant sought to dismiss the Updated Pathway document in evidence as merely a starting point for consultation. However, while it certainly contains consultative elements, it is clear that what is being consulted upon is methods of achieving the 2030 target, and not whether that target should be adopted at all.
100. The explanatory text at §10.8.8 requires expansion proposals to be ‘aligned with’ Mayor’s carbon reduction targets. While this text cannot introduce a strict requirement not found in the text of the statutory policy, it can perform an important interpretive function. Moreover, the Updated Pathway document is capable of being a material planning consideration in its own right, as set out in Mr Farmer’s proof of evidence at page 16.
101. In the present circumstance, it is the text of the detailed policy itself which sets out what this ‘alignment’ with the Mayor’s carbon reduction targets means in practice; namely that, subject to an appropriate assessment, proposals must demonstrate that there is an overriding public interest or no alternative solution with fewer environmental impacts.

Appeal proposal does not comply with the Development Plan

102. HACAN East agrees with LBN that the appeal proposal fails to comply with the wellbeing and quality of life aspects of Policies SP2 and SP8 of the Newham Plan, due to the failure to provide adequate mitigation for the significant adverse effect on noise arising from the removal of the Saturday afternoon curfew.
103. The Appellant has repeatedly stressed the emphasis in Policy SP2 on the “*need to improve employment levels and reduce poverty*”. For the reasons set out by HACAN East in its socio-economic evidence, the extent to which the appeal proposal can be expected to do either is highly uncertain.

⁵² CD 3.9.38, pg 54.

104. HACAN East also agrees with LBN that Policies D13 and T8 of London Plan are breached on grounds of noise, since the inadequacy of the proposed mitigation for the noise impacts of the appeal proposal means that it fails to “*clearly demonstrate[...] how noise and other nuisances will be mitigated and managed*” in accordance with Policy D13 or “*include mitigation measures that fully meet [its] external and environmental costs, particularly in respect of noise*” in accordance with Policy T8(B).
105. In addition to breaching Policy T8 on noise grounds, HACAN East submits that an additional conflict with the policy arises in respect of the appeal proposal’s climate change impacts.
106. In her note submitted in response to Dr Chapman’s additional note, Ms Congdon accepted the point made by Dr Smith that air travel from LCY is less efficient than travel from alternative airports by a factor of 60%, and overall emissions would be lower if passengers were to fly from other London airports operating larger aircraft.⁵³ Even in the context of near total displacement, this means there is a carbon cost to the scheme.
107. Policy T8 requires that demonstration of an overriding public interest or lack of suitable alternatives. In circumstances where the Appellant has provided, to adopt Mr McFadden’s phrase, a business case rather than a need case, and where there would be an acknowledged lower climate impact if additional demand were handled at other airports, the appeal proposal satisfies neither of these criteria.

The Planning Balance

108. The appeal scheme conflicts with Policies SP2 and SP8 of the Newham Plan and D13 and T8 of the London Plan, and therefore the development plan taken as a whole. Accordingly, the presumption against the grant of planning permission under section 38(6) of the Planning and Compulsory Purchase Act 2004 comes into play. Permission should be refused unless material considerations indicate otherwise.

⁵³ INQ-28, §8, pg 2; Dr Smith Proof, pg 29, PDF pg 30.

Benefits

109. HACAN East recognises that there will be some economic benefit from the appeal proposal but the extent of this benefit has been greatly overestimated for the reasons set out in the evidence of Dr Chapman and the economics section above. Specifically, the employment gains from the proposal are likely to be less than predicted, business passenger growth and consequently GDP growth lower than forecast, and the monetised environmental harms arising from the proposal to be substantial. All these factors greatly reduce the weight that can be attributed to the economic benefits in the planning balance.
110. The claimed beneficial effect on health is also predicated on assumptions about employment and noise that are disputed by HACAN East. While no issue is taken with the methodology of the health chapter in the ES, if the inputs are wrong the outputs will also be wrong, and HACAN East therefore contend that there is considerable uncertainty regarding the health effects of the proposal. Contrary to §9.4.4 of Mr Bashforth's proof, they cannot safely be attributed positive weight in the planning balance.⁵⁴
111. For all the reasons set out above the embedded noise mitigation is extremely uncertain regarding the level of reduction in noise levels for residents within the 51dB and 54dB contours. This reduces the weight to be attributed to the benefits of faster re-fleeting if the appeal proposal is granted permission.
112. National aviation policy does provide support for aviation expansion in general terms. However, MBU weighs negative in planning balance where there is non-compliance. As set out above, in the circumstances of the current appeal proposal, HACAN East submits that the Appellant has not demonstrated that the adverse environmental impacts will be satisfactorily mitigated and therefore the policy support of MBU does not apply.
113. The projected GHG emissions from the airport in the year 2031 in the DC scenario will be 389,519 CO₂e tonnes, a net increase of 77,024 CO₂e tonnes over the DM

⁵⁴ Mr Bashforth, Main Proof, §9.4.4, pg 53, PDF pg 56.

scenario.⁵⁵ Nevertheless, LCY has suggested that the appeal proposal will actually have a *positive* effect on climate change because it will purportedly facilitate a new generation of planes with lower per-passenger emissions. In light of the acknowledged higher carbon costs of meeting new passenger demand at LCY rather than other larger airports serving London, it is illogical for the Appellant to suggest that the carbon impacts of faster refueling should be awarded any positive weight in the planning balance.

Harms

114. The key harm is the adverse impact on residential amenity within the study area arising from the removal of the Saturday afternoon. As set out by LBN in its evidence, assessing the extent of this harm will require an element of subjective planning judgement on the part of the Inspectors and the Secretary of State but HACAN East contends that it will be significant and great weight should be attributed to it.
115. HACAN East also submits that the widespread evidenced noise impacts outside the 51dB average more contour is a further material harm which weighs against the grant of permission, as is the uncertainty of the embedded mitigation which affects the reliance that can safely be placed on the assessment of noise effects in the LOAEL in the ES and Mr Greer's proof.
116. Though Mr Bashforth took a different view on the substance of the noise and economics evidence, he accepted that if the Inspectors and the Secretary of State were to accept HACAN East's evidence on the extent of the economic benefits of the proposal and the uncertainty of the proposed embedded mitigation, this would feed through into the weight that should be attributed to economic benefits and noise harms respectively in the planning balance.
117. The acknowledged greater climate change impact of the proposal than if additional demand were handled at larger London airports is a further harm of the proposal.

⁵⁵ CD 1.18, Table 11-19, pg 38, PDF pg 43.

118. Accordingly, on balance, while there are material considerations which point towards the grant of planning permission, these do not overcome the presumption against as a result of lack of compliance with the development plan, taking into consideration the material considerations that weigh against the grant of planning permission.

CONCLUSION

119. The strength and scale of local opposition to the appeal proposal has been apparent throughout the process. In circumstances where there is considerable risk of environmental harm and uncertainty over its likely extent, a precautionary approach should be adopted. In the present circumstances we have hundreds of thousands of people who will be exposed to a material new source of noise on Saturday afternoons, and, given the uncertainty over the proposed mitigation, tens of thousands who may be exposed to more significant adverse effects than forecast in EIA terms. In line with the precautionary approach and local planning policies, the burden is on the Appellant to demonstrate that adverse environmental effects will not occur. It has not been discharged. Set against this risk of significant harm, we have economic benefits which have been shown to be highly speculative. The Inspectors are invited to recommend to the Secretary of State that the appeal be dismissed.

2 February 2024

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