



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 - 15 December 2023

CONTENTS

1.	Introduction	3
2.	Background	4
3.	Planning Policy	5
4.	HACAN East's Case: Noise	6
5.	HACAN East's Case: Economic impact	7
6.	HACAN East's Case: Climate Change	9
7.	HACAN East's Case: Overall	10
8.	List of Documents	11

1. INTRODUCTION

- 1.1 This Statement of Case is submitted by HACAN East, a campaign group made up of residents from East London and South East London, mainly concerned with the impact of London City Airport (“**LCA**”) on people living below its flight paths. HACAN East campaigns for fairer flight paths and protections for the overflow.

- 1.2 On 25 August 2023, HACAN East was granted Rule 6 status in relation to LCA’s appeal (APP/G5750/W/23/3326646) against the refusal of its Section 73 application to vary a number of conditions attached to a July 2016 permission, allowed on appeal. The purpose of the present application is to expand the maximum capacity of LCA to 9 million passengers per annum, from its current maximum of 6.5 million per annum.

2. BACKGROUND

2.1 On 26 July 2016 planning permission was granted to LCA on appeal for "*Works to demolish existing buildings and structures and provide additional infrastructure and passenger facilities at London City Airport.*" Conditions attached to that permission included:

2.1.1 An annual cap on passenger numbers at 6.5 million.

2.1.2 Restrictions on the number of flights permitted to take off or land between the hours of 06:30 and 06:59, Monday – Saturday.

2.1.3 A 24-hour respite period between 12:30 on Saturday and 12:30 on Sunday, during which flights are not permitted to take off from or land at LCA.

2.2 The Section 73 application which forms the subject of the present appeal was submitted on 19 December 2022. The appeal proposal is described as follows:

"Section 73 application to vary Conditions 2 (Approved documents) 8 (Aircraft Maintenance) 12 (Aircraft Stand Location) 17 (Aircraft Take-off and Land Times) 23, 25, 26 (Daily limits) 35 (Temporary Facilities) 42 (Terminal Opening Hours) 43 (Passengers) and 50 (Ground Running) to allow up to 9 million passengers per annum (currently limited to 6.5 million) arrivals and departures on Saturdays until 18.30 with up to 12 arrivals for a further hour during British Summer Time (currently allowed until 12.30), modifications to daily, weekend and other limits on flights and minor design changes, including to the forecourt and airfield layout attached to planning permission 13/01228/FUL allowed on appeal APP/G5750/W/15/3035673 [...]." (**"The Appeal Proposal"**).

2.3 The Appeal Proposal would allow additional flights between the hours of 06:30 and 06:59 on weekday and Saturday mornings and allow flights on Saturday afternoons and evenings until 18:30 (or 19:30 during British Summertime months).

2.4 At a special meeting of the Strategic Development Committee of the London Borough of Newham (“**LBN**”) on 10 July 2023, the Section 73 application was refused by LBN for the following reasons:

- The proposal, by reason of the additional morning and Saturday flights, and reduction of the existing Saturday curfew would result in a new material noise impact which would result in significant harm to the residential amenity of nearby residential properties. This would be contrary to policies D13 and T8 of The London Plan (2021) and policies SP2 and SP8 of the Newham Local Plan (2018).
- A Deed of Variation is required in order for the s106 agreement of the parent permission to apply to this permission to secure and update the obligations necessary to make the application acceptable. In the absence of such an agreement the application would fail to secure benefits, financial contributions including mitigations related to employment, transport, air quality, sustainability, and residential amenity.

Note to Applicant: This final reason for refusal could be overcome following the submission of an acceptable proposal and the completion of a S.106 legal agreement which address each of the above points.”

3. PLANNING POLICY

3.1 HACAN East will rely on the relevant provisions of the Development Plan, including:

3.1.1 The London Plan: The Spatial Development Strategy for Greater London (March 2021)

3.1.2 Newham Local Plan: 2018 – 2033 (December 2018)

3.2 HACAN East will also rely on applicable international, national, and local policies and relevant statutory duties, including:

3.2.1 Climate Change Act 2008

3.2.2 Planning and Compulsory Purchase Act 2004

3.2.3 National Planning Policy Framework

3.2.4 Airports National Policy Statement (2018)

3.2.5 Making Best Use of Existing Runways (2018)

3.2.6 London Net Zero 2030: An Updated Pathway (2022)

4. HACAN EAST'S CASE: NOISE

4.1 HACAN's primary case on the issue of noise is that the Appeal Proposal would lead to a materially new source of noise for residents in overflowed areas, with a substantively negative impact on residential amenity. In particular:

4.1.1 HACAN East contends that LCA is wrong to suggest that the Appeal Proposal would not constitute a new source of noise for overflowed residents, but rather an extension/intensification of an existing source of noise. The reduction of the Saturday curfew in particular would lead to an additional six-hour period each week (seven hours in summer months) during which residents under LCA flight paths would be subject to new aviation noise impacts.

4.1.2 Moreover, this loss of amenity on Saturday afternoons is not comparable to other days of the week. The current respite period has substantial value to overflowed residents in providing them with time for outdoor leisure pursuits, socialising, or relaxation, free from aircraft noise.

4.1.3 While the Environmental Statement submitted by LCA concluded that the effect of implementing the Appeal Proposal would be "minor adverse (not significant)" in terms of noise impact, LBN highlights in its statement of case that the consultation responses received indicate that the loss of the Saturday afternoon curfew would constitute a significant effect, contrary to the conclusions of the ES (LBN Statement of Case, §5.8). HACAN East supports LBN's conclusion on this issue.

4.1.4 HACAN East will argue that the Appeal Proposal would have a significant effect within the noise contour area, and a material effect for many miles outside it.

4.1.5 It will also argue that, to the extent that there remains any uncertainty in the scientific data around the health impacts of extended exposure to

unmitigated noise, the Inspector is required to adopt a precautionary approach.

4.2 HACAN East will also rely on evidence demonstrating that the proposed mitigation measures in respect of noise are inadequate.

4.2.1 Much of LCA's case relies on the introduction of a new generation of purportedly quieter aircraft. LCA accepts that its noise modelling is predictive and based on assumptions about levels of noise from these new aircraft (Environmental Statement, Volume 2, Appendix 8.3: Air Noise, pp. 4-5). There is a need for real world validation of this data.

4.2.2 HACAN East will argue that this reliance on new-generation aircraft to mitigate noise impacts is misplaced. A Citizen Study beyond the proximity of the runways suggests that the overflight noise of the new generation aircraft is not meaningfully quieter than their predecessors.

4.2.3 Since February 2016, LCA's flight paths have been concentrated, and the noise impacts consequently exacerbated for overflowed residents. The nature of the airport's location and layout, together with this concentration of flight paths, means that the vast majority of flights now follow the same path, accounting for changes in the direction of the runway with changes in wind direction. Within this context, the best mitigation in terms of noise impact is that which already exists, namely the 24-hour respite period at weekends.

4.2.4 Indeed, the inclusion of this respite period in the conditions attached to the 2016 application demonstrates that the Inspector in that appeal considered it necessary, in order to mitigate the noise impact of the previous application, and reasonable.

4.2.5 In addition, there now exist considerably more residential buildings immediately under main flight paths from LCA than there were in 2016,

with further major developments anticipated in the Docklands area. This will result in more residents living within the noise contour area than there were at the time of the previous application. Yet the current Appeal Proposal aims to *reduce* mitigation relating to noise impacts relative to the 2016 application.

- 4.3 As set out in LBN's Statement of Case, the negative noise impacts of the Appeal Proposal would be contrary to Policies D13 and T8 of the London Plan and Policies SP2 and SP8 of the Local Plan.

5. HACAN EAST'S CASE: ECONOMY

- 5.1 The Appeal Proposal is explicitly designed to allow LCA to increase its share of the leisure travel market (LCA Statement of Case, §§3.6–3.7, 6.16–17). HACAN East will lead evidence that this is crucially relevant to the extent of the economic benefits of the Appeal Proposal and that increased leisure travel, especially outbound leisure travel, provides limited regional economic benefits.
- 5.2 Furthermore, such economic benefits as may arise for the wider community from the Appeal Proposal are far from certain and have been overstated by LCA, which should additionally reduce their weight in the planning balance.
- 5.3 Such economic benefits as may arise will in any event be outweighed by the noise and other negative environmental impacts of the Appeal Proposal, even if given considerable weight.

6. HACAN EAST'S CASE: CLIMATE CHANGE

6.1 The climate change impact of the Appeal Proposal is a material planning consideration, relevant in particular to compliance with the Development Plan.

6.2 HACAN East's case is that the Appeal Proposal has not adequately demonstrated that it is compatible with Development Plan policies around climate change or national and regional targets for the reduction of greenhouse gas ("GHG") emissions.

6.3 Policy T8(B) of the London Plan 2021 explicitly addresses the impact of aviation on climate change, providing 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. 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."

6.4 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."

6.5 In January 2022, the Mayor adopted a target to make London a Net Zero Carbon City by 2030, as set out in the policy document 'London Net Zero 2030: An Updated Pathway'. 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'.

6.6 The report concluded at page 54 that, regardless of which of its proposed potential pathways to Net Zero the Mayor ultimately adopted:

“Aviation emissions have a large impact on 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. Key measures include:

- *Ensuring that aviation growth is not a priority in local growth or recovery plans going forward*
- *Working with Boroughs and lobbying Government to limit further expansion of airports through reviewing its Airport National Planning Statement and to limit aviation travel demand growth*
- *Encouraging businesses to commit to reducing air travel for example as part of corporate net zero commitments.*
- *Encouraging tourism by rail from suitable destinations, such as UK and Europe.”*

6.7 The Appellant’s Environmental Statement at Table 11-19 (Chapter 11, page 38) indicates that the projected GHG emissions from the airport in the year 2031 in the development case (“**DC**”) scenario will be 389,519 CO₂e tonnes, a net increase of 77,024 CO₂e tonnes over the do minimum (“**DM**”) scenario.

6.8 Nevertheless, the LCA suggests in its statement of case that the Inspector should actually assign *positive* weight to the Appeal Proposal’s effect on climate change because it will purportedly facilitate a new generation of planes which will result in lower per-passenger emissions (LCA Statement of Case, §§9.6–9.7).

6.9 HACAN East contends that the opposite is the case, and that the Proposal will have a negative impact on climate change. As set out by LBN in its Statement of Case, evidence regarding passenger handling capacity at the other London airports indicates that the extra passenger demand of 2.5 million passengers per annum sought by this application could be accommodated up to at least 2031 at the other London airports and that overall carbon emissions would be materially

lower if this demand were handled at other airports (LBN Statement of Case, §5.18).

6.10 In setting out the Appeal Proposal's purportedly neutral to positive effect on climate change, LCA relies heavily on the fact that the projected emissions and the net difference between the DM and DC scenarios are forecasted to decrease sharply after 2031 as new technologies come onstream. There are several problems with this approach.

6.10.1 These projections rely on technological advances which are far from certain. The Climate Change Committee's latest Progress Report to Parliament, published in June 2023, warns against overreliance on nascent technologies and states that such reliance carries "*considerable risks in relation to the aviation sector's contribution to emissions abatement for the Sixth Carbon Budget*". It concludes that demand management is the most effective way of reducing aviation CO₂ and non-CO₂ emissions (page 267).

6.10.2 Even if such technologies do come onstream after 2031, the Appeal Proposal is incompatible with the Mayor's target, as set out in 'London Net Zero 2030: An Updated Pathway'.

7. HACAN EAST'S CASE: OVERALL

- 7.1 HACAN East's case is that the Appeal Proposal is contrary to Development Plan policies around noise and other environmental impacts and that there are no material considerations which justify the grant of planning permission.
- 7.2 The Appeal Proposal will cause environmental harm and may adversely affect public health. It will result in a significant adverse noise impact for residents living in affected areas. A precautionary approach is required to be taken.
- 7.3 To the extent that economic benefits will result from the proposal, their extent is uncertain and is reduced by the fact that the increase in capacity is primarily targeted at leisure travellers.
- 7.4 The Appeal Proposal would lead to a significant increase in GHG emissions by 2031, with no proposals in place for the expansion of capacity at LCA to be accompanied by a reduction in capacity elsewhere, in line with the Mayor's updated pathway to Net Zero by 2030.
- 7.5 Both the purported benefits of the development and the proposed mitigation in respect of noise and climate change impacts are speculative and are outweighed by the identified harms. Therefore, the Appeal Proposal does not comply with the requirements of the 'Making Best Use of Existing Runways' policy statement (2018), in that the environmental impacts and proposed mitigations have not been adequately addressed.
- 7.6 The Inspector will be invited to dismiss the appeal.

8. LIST OF DOCUMENTS

8.1 HACAN East will refer to the documents provided by the Appellant and LBN, and will additionally rely on the following documents:

No	Document
1	'Pathways to Net Zero Carbon by 2030', prepared by Element Energy for the Mayor of London (18 January 2022).
2	'London Net Zero 2030: An Updated Pathway', Greater London Authority (January 2022).
3	'Comparison of maximum noise levels of New Generation and Old Generation aircraft in use at London City Airport – A Citizen Research Study', Tim Walker and John Doherty (first published by HACAN East 2022, updated Feb 2023).
4	IPCC Synthesis Report 6: Summary for Policymakers (March 2023)
5	CCC 'Progress in reducing emissions: 2023 Report to Parliament' (June 2023).
6	'Review of the Environmental Statement for London City Airport', prepared by LUC for the London Borough of Newham (June 2023).
7	'Losing Altitude. The economics of air transport in Great Britain', Alex Chapman, New Economics Foundation (17 July 2023).
8	'Citizen Science Study of Overflight Noise from New and Old Generation Aircraft at London City Airport', Christian Nold et al (forthcoming: manuscript submitted to <i>Community Science</i>).