

**Statement of Case London Borough of Newham**

**London City Airport**

**LBN Ref: 23/00059/REF**

**PINS Ref: APP/G5750/W/23/3326646**

**21<sup>st</sup> September 2023**

## 1. INTRODUCTION

- 1.1. This document comprises the London Borough of Newham's (LBN) statement of case supporting the refusal of application reference 22/03045/VAR (s73 Application)
- 1.2. The S73 application was submitted on 19 December 2022 and had the following description of development:

***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 dated 26th July 2016 which granted planning permission for; "Works to demolish existing buildings and structures and provide additional infrastructure and passenger facilities at London City Airport***

- 1.3. This 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.

- 1.4. This document will set out why LBN considers that the reasons for refusal were correct and justified and why the appeal against this decision should be dismissed.

## 2. BACKGROUND INFORMATION

- 2.1. LBN will describe the evolution of the development of the airport on the site between the Royal Albert Dock and the King George V Dock. That area had historically been part of the Royal Docks area that had fallen into disuse and some disrepair as a result of the change in the movement of freight by ships. The introduction of the London Docklands Development Corporation in the 1980's resulted in a different approach to that area and the pursuit of an airport in part of the Royal Docks area, in contrast to what had existed beforehand.
- 2.2. It had always been recognised that the introduction of such a use into that part of east London had the potential to bring advantages to the area and to London generally but also to bring potential conflict with adverse environmental impacts. The approach had therefore been one where the advantage was recognised but the adverse effects were to be mitigated and controlled by a series of measures imposed by planning conditions, section 106 obligations and by any other appropriate means.
- 2.3. The operation of the airport has therefore always been subject to controls on its activity and LBN will describe the nature of those controls intended to protect the residents and others living and working in the area. LBN will further describe the nature, aspirations and use of the controls available to seek to ensure the correct balance between the operation of the airport and the effect on the Neighbourhood is achieved. The benefits arising from the airport activity are fully acknowledged and recognised but the need to ensure that they remain within an acceptable level, including the ability to have time free from such effects, is equally critical.
- 2.4. The application site is London City Airport, located in the southern part of the borough in the Royal Albert Ward.
- 2.5. The application site is a designated Employment Hub and is located within Flood Zone 3 (benefiting from defences).
- 2.6. The airport is approx. 1.5km from the A13, 2.9km from the North Circular and 15km from the M25. It is served by the DLR and bus routes 473, 474, and has a PTAL rating of 3.
- 2.7. The site has previously received permission for the City Airport Development Programme (CADP1). This was resolved for approval by LBN under reference 13/01228/FUL but subsequently the Mayor of London directed LBN to refuse the application. Permission was subsequently granted on appeal ref APP/G5750/W/15/3035673
- 2.8. Construction works commenced in November 2017 but LBN has been informed were put on hold in 2020 due to the impacts of Covid.
- 2.9. To date, LBN has been informed that the following works have been completed:

- Extension to the deck over the KGV Dock to create the parallel taxi lane, runway hold and eight new stands (four of which have been brought into operation);
- Erection of a temporary noise barrier to the east of the existing East Pier where the four new stands have become operational;
- Foundations and deck for the East Terminal Extension (ETE) and New East Pier (NEP);
- The shell and core of the East Energy Centre (EEC) building.

2.10. The officer's report to Committee in respect of this Appeal application, which provides additional background information and the Decision Notice will be included in Core Documents

### 3. PROPOSAL

- 3.1. The application is described as:  
***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 dated 26th July 2016 which granted planning permission for; "Works to demolish existing buildings and structures and provide additional infrastructure and passenger facilities at London City Airport***
- 3.2. The proposed changes can be broadly summarised as:
- An increase in the limit on passengers from 6.5 million passengers per annum (mppa) to 9 mppa
  - A proposed extension to operating hours on Saturday to allow take off and landing up until 18:30 and up until 19:30 during British Summer Time for up to 12 arrivals.
  - Changes to the daily limit of flights within the first half-hour (06:30-07:00) from 6 to 9
  - Changes to operational hours of the Terminal (to 20:00 on Saturdays), Ground Running and Aircraft Maintenance (until 18:30) to reflect the proposed extension to flight times.
  - Changes to the location of aircraft stands to allow greater flexibility due to increased wingspan of new generation aircraft and alterations to the amount of hardstanding.
  - Changes to the approved plans and documents to reflect the above changes and to incorporate changes to approved documents resulting from the passage of time since the granting of the parent permission.
- 3.3. The Reasons for Refusal were issued in respect of the overall planning application and the various different matters contained within its description. One of those matters was the increase in passenger numbers from the current limit of 6.5 mppa to a figure of 9mppa. In respect of that consideration LBN does not object to an increase in passengers from 6.5 mppa to 9mppa subject to the impacts of such a change being effectively managed. This includes additional noise impacts, impact on public transport and environmental impacts. However, the proposals indicate that the reduction of curfew is required in order to help facilitate this. Additionally, associated impacts such as noise were measured on the basis of the proposed reduction in curfew. Therefore whilst LBN has no

objection in principle to passenger increases, it is not possible to assess passenger numbers in isolation.

- 3.4. To achieve the proposed changes, the application seeks 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) attached to the original permission.
- 3.5. In addition, conditions will be updated where they have been discharged since the granting of the previous permission to reflect those approvals.

#### 4. PLANNING POLICY CONTEXT

- 4.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise
- 4.2. The Local Development Plan comprises:
- The London Plan (GLA, March 2021)
  - the Newham Local Plan (2018)
  - the Newham Local Plan Policies Map (2018)
  - the Joint Waste Development Plan for the East London Waste Authority Boroughs (adopted 27th February 2012);
  - Material weight has been given to the National Planning Policy Framework (September 2023) and the National Planning Practice Guidance.
- 4.3. The following policies are relevant to the assessment of this application:
- 4.4. National Planning Policy Framework (MHCLG, July 2021) **this document was relevant at time of refusal but has since been superseded by the 2023 version:**
- 4.5. Aviation Policy Framework (SoS for Transport, March 2013)
- 4.6. Airport National Policy Statement (Department for Transport 2018)
- 4.7. The London Plan (GLA, March 2021)

GG1 Building strong and inclusive communities

GG2 Making the best use of land

GG3 Creating a healthy city

GG5 Growing a good economy

GG6 Increasing efficiency and resilience

Policy D4 Delivering good design

Policy D5 Inclusive design

Policy D11 Safety, security and resilience to emergency

Policy D13 Agent of Change

Policy D14 Noise

Policy E4 Land for industry, logistics and services to support London's economic function

Policy E11 Skills and opportunities for all

Policy G1 Green infrastructure

Policy G5 Urban greening  
Policy G6 Biodiversity and access to nature  
Policy G7 Trees and woodlands  
Policy G9 Geodiversity

Policy SI 1 Improving air quality  
Policy SI 2 Minimising greenhouse gas emissions  
Policy SI 3 Energy infrastructure  
Policy SI 4 Managing heat risk  
Policy SI 12 Flood risk management  
Policy SI 13 Sustainable drainage

Policy T1 Strategic approach to transport  
Policy T2 Healthy Streets  
Policy T3 Transport capacity, connectivity and safeguarding  
Policy T4 Assessing and mitigating transport impacts  
Policy T5 Cycling  
Policy T6 Car parking  
Policy T7 Deliveries, servicing and construction  
Policy T8 Aviation  
Policy T9 Funding transport infrastructure through planning

Policy DF1 Delivery of the Plan and Planning Obligations

Policy M1 Monitoring

4.8. Newham Local Plan (2018)

S1 Spatial Strategy and Strategic Framework  
S3 Royal Docks

SP1 Borough-wide Place-making  
SP2 Healthy Neighbourhoods  
SP3 Quality Urban Design within Places  
SP8 Ensuring Neighbourly Development  
SP9 Cumulative Impact

J1 Business and Jobs Growth  
J2 Providing for Efficient Use of Employment Land  
J3 Skills and Access to Employment

SC1 Environmental Resilience  
SC2 Energy and Zero Carbon  
SC3 Flood Risk and Drainage  
SC4 Biodiversity  
SC5 Air Quality

INF1 Strategic Transport  
INF2 Sustainable Transport  
INF4 Utilities Infrastructure



4.9. Draft Local Plan

- 4.10. The Draft Newham Local Plan (Regulation 18) was approved at Cabinet on 6 December 2022 for consultation. Statutory public consultation under regulation 18 took place between the 9 January 2023 and the 20 February 2023. The weight which should be accorded to draft policies is guided by paragraph 48 of the National Planning Policy Framework (NPPF) and paragraph 049 of the Planning Practice Guidance (Local Plans). These state that a new Local Plan may be given weight according to the stage of preparation of the emerging local plan, the extent to which there are unresolved objections to the relevant policies, and the degree of consistency between the relevant policies in the draft plan and the policies in the NPPF. As the draft Local Plan is at an early stage of development and has not yet been through statutory consultation, very limited weight can be placed on the policies in the Draft Local Plan, and the adopted Newham Local Plan 2018 and London Plan 2021 remain the key Development Plan documents used to determine applications.
- 4.11. NOTE: since the issuing of the decision, a new version of the NPPF has been published in September 2023. The LPA has reviewed this document and notes that the changes do not materially impact the conclusions drawn or the decision as made.

## 5. REASONS FOR REFUSAL

5.1. Reason 1

5.2. Reason 1 of the refusal was as follows:

*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)*

5.3. LBN will demonstrate that the proposal would result in a materially new and substantially negative impact on residential amenity in terms of noise resulting from the reduction of the existing curfew. It will be demonstrated that the noise impact assessments that have been carried out have failed to give sufficient emphasis and weight to the benefits of the existing curfew, and the significance of negative impacts arising from the loss of this curfew.

5.4. Evidence from the noise expert retained by LBN will show that the numerical quantification of aircraft noise in general is well established, and the methodology used in the ES is conventional with regard to noise occurring within the conventionally adopted time periods, particularly the noise contour period of mid-June to mid-September separately assessed for night and day.

5.5. The unusual feature of this application is that there are potential effects that are very specific to local circumstances, namely the increase on early morning aircraft movements and the loss of respite on Saturday afternoons.

5.6. Noise indices of any kind are only of use if they are linked to the results of noise and social surveys or incidence of health effects which permit the establishment of a correlation between numerical noise index values (and changes in those values) and observed effects in a population. There are very limited data in the literature to enable noise indices, and changes in their values, to be used to assess the significance of the effect of increase the number of aircraft movements in the half hour between 0630 and 0700. There is only information relating to the full night period 2300-0700. There is some information about the role played by respite periods for populations around airports, particularly in the case of airports with more than one runway where runway mode segregation or alternation is possible.

5.7. To assess the issue of noise on Saturday afternoons, air noise predictions have been undertaken in terms of the standard daytime LAeq,16h metric, but the predictions are based on only the aircraft movements at the weekend. Evidence shall show that this is not a standard assessment metric and there is no support for it in the technical literature.

- 5.8. The method of drawing conclusions from the outcome is not an established procedure. While the ES conclusion is that the effect of implementing the proposals in the application would be minor adverse (not significant), the consultation responses received indicate that the loss of the Saturday afternoon curfew would be a significant effect, contrary to the conclusions of the ES.
- 5.9. LBN's case in this respect is that the changes proposed will be a new and previously non-existent noise source experienced by people in the area that is currently not present during the respite periods and that additional flights will take place in the early morning. Such a change would be negative and result in material harm to residential amenity.
- 5.10. Changes of the sort envisaged within this Appeal and how they are to be considered was raised in the context of the section 73 appeal in relation to Luton Airport. The decision in respect of that is currently awaited but LBN will make reference to that in the context of this appeal. It will be demonstrated that if, in the awaited decision on the Luton S73 application, the SoS agrees with its ES methodology, then for those receptors at LCY experiencing an increase of in LAeq 8h of 1dB or more above SOAEL will be a significant effect. Restrictions on the number of movements between 06:30 and 06:59 would be the means to mitigate those significant effects.
- 5.11. These negative noise impacts would be contrary to Policies D13 and T8 of the London Plan which emphasise that noise generating impacts from development are required to be effectively mitigated and managed.
- 5.12. Similarly, the impacts would be contrary to Policy SP2 and SP8 of the Local Plan which require the economic benefits of applications to be balance with negative impacts of development on the environment (including noise) to be avoided or mitigated against and to not cause problems for existing lawful neighbours.
- 5.13. The submitted application emphasises the economic benefits of the scheme and considers that this outweighs the negative impacts identified above.
- 5.14. LBN will demonstrate that the economic benefits of the proposal have been considered and weight been given to these benefits as required by Aviation Policy Framework and Airport National Policy Statement. However, that they do not outweigh the negatives identified.
- 5.15. LBN will demonstrate that the curfew was imposed in order to manage impacts of the development on nearby residential uses and that the application has failed to provide sufficient justification for the reduction of this curfew. Particularly in light of the increased amount of residential

development that has taken place in the airport's surroundings since its approval.

- 5.16. Evidence provided by the aviation expert retained by LBN will show that Passenger forecasts provided by the CADP1 application were inconsistent with the aircraft movement forecasts, and was one of the factors that led to the 6.5mppa cap that was applied to that application. LBN shall demonstrate that a reasonable approach needs to be supported by reasonable input assumptions.
- 5.17. The approach adopted by the Appellant requires many input assumptions and the evidence shall show that many of the macro-assumptions (e.g. GDP projections, airline costs) carry material down-side risks. Collectively, and coupled with LCY's slow recovery from the Covid-19 Pandemic, the likely outcome is that the passenger forecasts in the appeal application will prove to be too high.
- 5.18. The evidence will show that consideration of passenger handling capacity at the other London airports indicates that the extra passenger demand of 2.5 mppa sought by this application could be accommodated up to at least 2031 at the other London airports. Although not a ground for LBN's refusal of the application, LBN does note that carbon emissions would be materially lower if this demand were handled at other airports at which aircraft with lower emissions per passenger operate and which LBN's aviation expert considers would have capacity to take up demand.
- 5.19. The Appellant has made the case that the additional operating hours requested would allow airlines to improve their efficiencies by flying their aircraft for more hours each week, and this is acknowledged by LBN.
- 5.20. The Appellant has stated that replacement of existing aircraft types with more efficient and cleaner aircraft types will be incentivised by being able to operate more weekly flying hours. LBN considers that as such types also have lower operating costs there are other incentives for airlines to re-equip.
- 5.21. Reason 2
- 5.22. Reason 2 of the proposal was as follows:

*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.*

- 5.23. LBN consider that this reason for refusal will fall away upon the negotiation of an acceptable s106 agreement.
- 5.24. Since the beginning of the appeal process, meetings have been arranged with the appellant to further discuss draft Heads of Terms with the aim of having a draft s106 agreement in place prior to the commencement of the Inquiry.
- 5.1. Subject to the agreement of this s106 agreement (in conjunction with TfL), LBN would agree to the removal of this reason for refusal. as required by the appeal process in the event that permission is granted.
- 5.2. The s106 is required to ensure that in the event the appeal is allowed, the mitigations and obligations secured as part of the original permission apply to the current proposal along with necessary updates. The view of the local planning authority remains that the first reason for refusal should be upheld even if a the 2nd reason falls away

## 6. Planning Conditions

- 6.1. LBN will work proactively with the appellant to provide a list of planning conditions before the start of the inquiry.

## 7. Other matters

- 7.1. The appellant's statement of case considers that Policy SP2 as referred to in Reason 1 is not relevant to the proposal.
- 7.2. Policy SP2 relates to healthy neighbourhoods. Part 1. A. iii. Of the policy emphasises:  
  
*The need to improve employment levels and reduce poverty, whilst attending to the environmental impacts of economic development including community/public safety, noise, vibrations and odour and the legacy of contaminated land as per SP8 and SC1;*
- 7.3. LBN considers this part of the policy to be relevant as it emphasises the overarching strategic objective of the local plan to balance benefits to employment and economy with the environmental stresses (including noise) resulting from development. Additionally, it specifically links into Policy SP8 which formed part of the reason 1.
- 7.4. LBN have agreed with the appellant that an additional technical note will be submitted by the applicant in respect of aviation safeguarding. Subject to the matters in para. 242-245 of the officer's report being addressed within this note, LBN will agree that the application will not alter the safeguarding controls associated with London City Airport.
- 7.5. The existing CADP permission includes a series of conditions and planning obligations that require the reporting of information by the airport

to LBN on an annual basis, within an Annual Performance Report ('APR'). The Airport is also obligated by the CADP S106 agreement to report any breaches of planning conditions or the S106 agreement to LBN as they become aware of the breach.

- 7.6. LBN are obligated by the existing CADP S106 (as amended) to report the APR to members of LBN's Strategic Development Committee on an annual basis. The View of LBN is that the existing reporting requirements on the airport and LBN provide a robust and transparent framework for the reporting of breaches and potential breaches of planning control, to LBN officers and members. LBN therefore consider that in the event the application is approved, some minor changes to the reporting processes should be secured, including the reporting of Ultra Fine Particulate levels to LBN.
- 7.7. Without the technical note agreed to be provided, the supporting evidence provided with the application is insufficient to demonstrate that there would be no change to the safeguarding controls.

## **8. Availability of Documents**

- 8.1. The appeal documents are available for inspection on our website at <https://pa.newham.gov.uk/online-applications/> by searching Appeals and using the reference **23/00059/REF** or via prior appointment at:  
Newham Dockside  
1000 Dockside Road  
London  
E16 2QU
- 8.2. Please contact [Liam.McFadden@Newham.gov.uk](mailto:Liam.McFadden@Newham.gov.uk) to arrange an appointment