



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

OPENING STATEMENT

of

HACAN EAST

5 December 2023

INTRODUCTION

1. London City Airport is unusual among UK airports in a number of key respects. Its distinctiveness means that the present appeal is different from other recent airport expansion appeals. Moreover, the factors which set London City apart from other airports relate to each of the broad topic areas which the Inspector has identified as being relevant to the determination of the present appeal: namely socio-economic impacts and forecasting, noise, and planning and climate change.
2. The first unusual feature of London City Airport is its dependence on business travellers for a uniquely high proportion of its passenger throughput. The Civil Aviation Authority's 2022 passenger survey found that 41.5% of London City passengers who responded to the survey were travelling for business purposes; by far the highest proportion of business travellers for all the airports surveyed.¹ The next highest proportion was Heathrow with 18.8%. I will return later to the ways in which this unusual passenger breakdown is fundamental in properly assessing the likely economic impacts of the appeal proposal.
3. Second, London City is unique among airports serving London in being situated very close to residential properties, in the middle of one of the most densely populated parts of the capital. Indeed, 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). This has a profound bearing on the number of people who would be adversely affected by additional noise nuisance from the appeal proposal and on the extent of those impacts.
4. Third, in common with Heathrow, but not with other UK airports which have been the subject of recent appeal decisions, London City lies within the Greater London administrative area. This means that the regional planning policies in the London Plan 2021 apply, in particular Policy T8 on Aviation, as does the Mayor of London's target to make London a net zero carbon city by 2030. The planning policy context

¹ 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/>.

with respect to climate change is therefore different in the present appeal from other recent aviation appeals, meaning that very great care must be taken not to apply those appeal decisions directly to the determination of this appeal.

5. 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” (CD3.5.1, §5), it is for planning decision makers to weigh those 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 (CD3.5.2, §1.39).
6. HACAN East’s case is that the economic benefits of the present appeal proposal have been overstated, that its environmental costs (including economic costs) would be more significant than the Appellant acknowledges, and that the mitigation proposed to meet those costs is both inadequate and uncertain.

HACAN East and opposition to the proposal

7. HACAN East is a campaign group made up of residents from East and South East London, who are concerned about the impact of London City Airport on people living below its flight paths. HACAN East campaigns for fairer flight paths and protections for overflow residents.
8. As the Inspector is no doubt aware, public sentiment is strongly against the appeal proposal, as reflected in the comments received by the London Borough of Newham on the Section 73 application. Out of 588 public comments received, 544 were objections, with only 41 comments in support. This equates to a 92.5% objection rate.² The most common concern raised by objectors was the noise impact of the proposal, in particular the loss of the much-valued Saturday afternoon respite period, but climate change and air quality impacts were also raised frequently.

² Public comments on the Section 73 application, <https://pa.newham.gov.uk/online-applications/applicationDetails.do?activeTab=neighbourComments&keyVal=RNYU92IY5NA00&neighbourCommentsPager.page=1>.

THE ECONOMIC IMPACTS OF THE APPEAL PROPOSAL

9. The Appellant strongly emphasises the economic benefits of the appeal proposal, but it is crucial that those benefits are properly assessed on the basis of a comprehensive evidence base in order to determine the extent of the weight they should be accorded in the planning balance. The evidence of Dr Alex Chapman, as set out in his Proof of Evidence, explains how that evidence base should be obtained and calls into question several aspects of the Appellant's socio-economic assessment.

10. In particular, Dr Chapman highlights the following key points:

10.1. **First**, two crucial points on business travel and the Appellant's rationale for the proposed extension, which stand on their own within Dr Chapman's evidence. On business travel, in light of London City Airport's dependence on business passengers, the Appellant's assumptions about the speed and extent to which business travel will bounce back after the Covid-19 pandemic are not credible when viewed in the light of trends in business travel over the past two decades. As set out by Dr Chapman in his report *Losing Altitude* (CD 3.5.11, p.15) in the 15 years since the financial crisis of 2007/08 the absolute number of business-purposes air trips has still not recovered. HACAN East suggests that it would be overoptimistic to expect such a recovery to occur now in the aftermath of Brexit and the pandemic, which served to incentivise a transition to greater remote working, when it had not occurred in the previous decade.

10.2. The other key point, almost the flip-side of the airport's current dependence on business travel, is that the Appellant has repeatedly stated that the core business rationale for the proposed extension of its operating hours is to allow for airlines to expand their selection of leisure routes, with a particular focus on shifting to "leisure type routes" on Saturdays (CD1.60, §§5.40, 5.41). If that is the case, it has very significant implications for the purported economic benefits of the proposal, because it is widely understood that expansion of leisure travel, particularly at smaller airports,

can be problematic economically. Put very simplistically, growth in *outbound* leisure travel from smaller airports can take money out of an area rather than bring it in. It is certainly the case that business passengers produce greater benefits for the wider economy than leisure travellers. Given that there is considerable reason to doubt the Appellant's projections regarding the future speed and extent of business passenger growth, it is reasonable to assume that the economic benefits of the appeal proposal will be less extensive than claimed, even if London City is able to capture an increased share of the leisure market, leading to an overall increase in passenger numbers.

10.3. **Second**, projections regarding employment growth as a result of previous London City Airport expansion applications have been shown to be over-optimistic. In 2008 an application was approved which, at the time, was estimated to facilitate an increase in passenger numbers from around 2.5 million to 3.9 million and support around 2,277 direct full-time equivalent (FTE) jobs. When the target passenger throughput was eventually surpassed in 2015 the FTE employment reported by the airport was 1,830 jobs, some 400 jobs short of their previous projection.³ In other words, more than half of the projected job growth did not materialise. In an age of increasing automation, there is every reason to think that current projections regarding employment generated by the present appeal proposal may be similarly overstated.

10.4. **Third**, turning to methodology, this is another area where things are now different from the position in other airport inquiries, particularly the Bristol and Luton Airport inquiries. Updates to the WebTAG guidance published in November 2022 are important. Had the Guidance wished to say that WebTAG was not applicable to planning decisions, it could have done so, and in clear terms. Instead, the Guidance makes it explicit that it expects that "other appraisal practitioners" (ie not government appraisers)

³ London City Airport, 2015 Annual Performance Report, p. 31, para 7.2.4, <https://www.londoncityairport.com/corporate/corporate-info/reports-and-publications>.

will find the guidance useful (CD3.10.4, p.3, para 1.1.3). The Guidance makes it clear that WebTAG is relevant to planning decisions by explicitly addressing decisions on planning applications (para 1.1.4), clarifying that these decisions will (one might say obviously) still include taking account of relevant material considerations which go beyond what a WebTAG appraisal provides. However, when considering the economic impact of a major aviation intervention, WebTAG appraisal is best practice for economic appraisal. Indeed, the fact that Gatwick Airport recently conducted a WebTAG appraisal in relation to its proposed expansion indicates the relevance of the guidance to private sector schemes.

- 10.5. **Fourth**, the Appellant has failed adequately to account for the displacement and substitution of impacts both within, and outside, the study area leading to the overstatement of scheme benefits. Proposed new retail and hospitality jobs at the airport would, in all likelihood, be subject to high levels of displacement from elsewhere in the catchment. Passengers, meanwhile, could shift away from other airports within the London system and/or from lower-carbon rail travel via the Channel Tunnel.
- 10.6. **Fifth**, there are a number of important gaps in the welfare-based cost-benefit analysis provided by the Appellant, notably the failure to monetise the noise impacts of the proposal. Dr Chapman's analysis shows that when noise impacts are included, and unmitigated non-CO2 impacts factored in using the government's recommended approach, the scheme's net welfare impact is negative.

THE NOISE IMPACTS OF THE APPEAL PROPOSAL

11. The Appellant's case on noise has two components. First, it claims that the extension of the airport's operating hours would not constitute a material new source of noise nuisance for nearby residents but would only lead to "non-significant increases in noise" (CD 10.1, §7.1). Second, it suggests that if the noise impacts of the proposal are considered to be new and/or significant, that they can be adequately mitigated by a transition to a new generation of aircraft which are purportedly quieter than

their predecessors. Indeed, it is claimed that “Due to the greater use of quieter new generation aircraft by 2031, weekend noise levels are expected to remain broadly similar to 2019 despite the extended operating hours” (CD 10.1, §7.3).

12. That the loss of the highly valued Saturday afternoon respite period and the increase in the number of permitted early morning flights would constitute a new and significant source of noise nuisance for nearby residents is self-evident. HACAN East does not consider the Appellant’s suggestion to the contrary to be credible. The anticipated loss of amenity on Saturday afternoons if the appeal proposal were to go ahead is not comparable to other days of the week. The current respite period has substantial value to densely populated overflowed communities in providing time for outdoor leisure pursuits, socialising, or relaxation, free from aircraft noise.
13. In 2016, when the previous planning permission to which the current Section 73 application relates was granted on appeal, the Inspector considered that a 24-hour respite period for local communities was not only desirable but necessary to make the proposals for expansion acceptable in planning terms. No material change of circumstances has occurred to make the restrictions on operating hours less necessary now than they were in 2016. On the contrary, as the evidence of Mr John Stewart indicates, developments on the ground have actually rendered the respite period and restrictions on early morning flights *more* important for overflowed communities than they were when the relevant conditions were imposed in respect of the 2016 application.
14. As regards mitigation, the Appellant’s own evidence from its noise survey conducted in August 2023 and published on 24 November 2023 does not support its contention that the new generation aircraft are significantly quieter away from the runway or during overflight (CD3.7.55). This survey found a 3.4 dB difference in maximum noise levels between the aircraft which it classified as old and new generation when monitoring departures from London City Airport from a site in Ilford (CD3.7.55, p.8, Table 3), and a 2.5 dB difference when monitoring arrivals from a site in Lambeth (CD3.7.55, p.7, Table 1). According to the Civil Aviation Authority’s document on ‘Measuring and modelling noise: How aviation noise can

be measured and modelled' "a change of 3dB has been defined as the minimum perceptible under normal conditions" (para. 2).⁴ Thus, on the Appellant's own evidence, when measurements are taken during overflight at a distance from the runway, there is a barely perceptible difference in noise levels between old and new generation aircraft during departures and a difference which is unlikely to be perceptible under normal conditions during arrivals.

15. In particular, the comparison of the old and new generation of the *Embraer* aircraft from the Lambeth monitoring site found a 1.9 dB reduction in the LA_{max}, from 71.8 dB for the Embraer E190 to 69.9 dB for the Embraer E290 (CD3.7.55, p.7, Table 1). This is very similar to the level of difference between these two models of aircraft found in the citizen science study carried out by Dr Christian Nold and a team of citizen researchers, the key findings of which are presented in Dr Nold's proof of evidence. This showed that there was a 1.7 dB difference in maximum volume between old and new generation Embraer aircraft during overflight from six monitoring stations underneath London City Airport's arriving flightpath passing over Mottingham (SE9), Catford (SE6), and the Horniman Museum and gardens in Forest Hill (SE23). This difference is unlikely to be perceptible to the average human ear in normal conditions.
16. Furthermore HACAN East takes the view that the proposed 'mitigation' for the noise impacts of the appeal proposal is in fact no mitigation at all. The best mitigation for the airport's expansion of passenger capacity was that endorsed by the Inspector in 2016; namely the 24-hour weekend respite period and restrictions on early morning flights. The Appellant now invites the Inspector in the present appeal to conclude that the mitigation which was considered essential to make the 2016 application acceptable in planning terms is no longer necessary. We disagree.
17. HACAN East agrees with the London Borough of Newham that the negative noise impacts of the appeal proposal would be contrary to Policies D13 and T8 of the London Plan 2021 and Policies SP2 and SP8 of the Newham Plan 2018. Moreover,

⁴ 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.)

there is a growing body of evidence regarding the public health impacts of noise pollution, as set out in the paper by Professor Charlotte Clark, which is appended to the planning proof of evidence of Mr Jake Farmer. In light of the uncertainty around the public health impacts of the appeal proposal, and the need to take a precautionary approach, the noise impacts count strongly against the grant of planning permission.

THE PLANNING POLICY CONTEXT WITH REGARD TO CLIMATE CHANGE

18. As has already been noted, the planning policy context for the present appeal is materially different from other recent appeals concerning airport expansion because the policies in the London Plan apply.

19. In particular, Policy T8(B) explicitly addresses the impact of aviation on climate change. The wording of that policy is important:

“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.” (Emphasis added).

20. 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.”

21. This explanatory text performs an important interpretative function in helping to explain the meaning of the policy (per *R(Cherkley Campaign) v Mole Valley DC* [2014] EWCA Civ 567 at §16 and *New Dawn Homes v SSCLG* [2016] EWHC 3314

(Admin) at §37). In the present case, it indicates that the full acknowledgement of the environmental impacts of aviation and inclusion of mitigation measures mandated by Policy T8(B) must address the issue of compliance or lack thereof with the Mayor's carbon reduction targets.

22. 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'.
23. 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.*" That is important. In light of it, the Appellant cannot credibly dismiss the climate impact of the inevitable increase in aviation emissions on the basis that some other type of emission reduction in another sector will compensate.
24. The Appellant's Environmental Statement 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 (CD1.18, p. 38, Table 11-19).
25. Nevertheless, the Appellant suggests 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 (CD10.1, §§9.6–9.7).
26. HACAN East contends that the opposite is the case, and that the Proposal will have a negative impact on climate change. As rightly highlighted by the London Borough of Newham, 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 (CD10.2, §5.18).

27. In setting out the Appeal Proposal's purportedly neutral to positive effect on climate change, the Appellant 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. This approach is flawed and unreliable, for several reasons.
28. **First**, 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*", i.e. over the next 14 years (CD3.9.2 p. 267). It is notable that the High Court was particularly concerned about this type of risk in the Net Zero Strategy judgment. Heavy reliance on hoped-for but unproven and, crucially, unscaled technology, cannot be justified, particularly when we know that the most effective way of reducing aviation CO₂ and non-CO₂ emissions is managing demand.
29. **Second**, even if we take a rosy view and assume such technologies would come onstream after 2031, that does not assist. The Appeal Proposal would still be incompatible with the Mayor's adopted target, as set out in 'London Net Zero 2030: An Updated Pathway'. This target is a material planning consideration in its own right, and it is HACAN East's case that the Appellant's failure properly to address it constitutes a lack of compliance with the requirements of Policy T8 of the London Plan 2021.
30. National Government policy also stresses the importance of *rapid* as well as deep reductions in aviation emissions, with the 2050 trajectory in the Jet Zero strategy including "in-sector interim targets of 35.4 MtCO₂e in 2030 [and] 28.4 MtCO₂e in 2040" (CD3.5.7, p. 15). In its recommendations for the Sixth Carbon Budget, the CCC

recommended a still more ambitious interim target for aviation emissions of 31 MtCO₂e/year by 2030 (CD3.9.13, p. 168).

CONCLUSION

31. The Appellant's case is shot through with uncertainty. Much of it is founded on predicted future trends. Other aspects are founded on predicted future technologies. There is a great deal of uncertainty about these trends and technologies.
32. The uncertainty has already bitten. The Appellant's assessment of the likely economic impact of the appeal proposal at the time of the original application was predicated on the assumption that business travel would bounce back to 2019 levels by 2023 (Need Case, CD1.6, Table D.6). This has not occurred.
33. HACAN East considers that the forecast growth of business travel to 20% above pre-pandemic levels by 2035 is also highly unlikely to materialise. If it does not, then the economic benefits of the appeal proposal have been significantly overstated.
34. Likewise, projected employment gains from previous expansion applications at London City Airport have failed to materialise, casting doubt on the anticipated jobs figures in relation to the current appeal proposal.
35. The proposed mitigation for the noise impacts of the proposal relies almost entirely on the assumption that new generation aircraft flown from the airport will be significantly quieter than older aircraft. Yet even the Appellant's own evidence suggests that the difference in noise levels for departing aircraft away from the runway is barely perceptible to the human ear during normal conditions, while the reduction in perceived noise levels for arriving aircraft is unlikely to be perceptible at all. Meanwhile Dr Nold's citizen science study indicated virtually no audible difference between new and old generation Embraer aircraft during overflight from monitoring sites under the arriving flightpath in South East London.

36. In reaching its conclusion that the appeal proposal may have a net positive impact on climate change overall, the Appellant relies on a significant predicted uptake in the use of sustainable aviation fuel after 2031. Yet this technology is highly speculative, with the Climate Change Committee warning against overreliance on sustainable aviation fuel take-up to meet sectoral carbon budgets for aviation. In any event, even were take-up after 2031 to match the Appellant's predictions, the appeal proposal would remain out of step with the Mayor's 2030 net zero target.
37. As set out at the outset, national policy is supportive of aviation expansion where its environmental costs can be minimised and properly mitigated. It is HACAN East's case that the costs of the appeal proposal are too high, the proposed mitigation too slight and speculative, and the economic benefits too uncertain to justify the granting of permission. The Inspector will, in due course, be invited to dismiss the appeal.

5 December 2023

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