

**CITY AIRPORT DEVELOPMENT PROGRAMME (CADP)**

**Appeal Against Refusal of S73 Application 22/03045/VAR**

**Appeal Reference: APP/G5750/W/23/3326646**

**COMMUNITY INFRASTRUCTURE LEVY REGULATIONS 2010**

**(AS AMENDED)**

**SECTION 106 AGREEMENT**

**STATEMENT OF COMPLIANCE**

**December 2023**

## **1. Introduction**

- 1.1. This Statement relates to the appeal (**the Appeal**) by London City Airport Limited (**the Appellant**) against the refusal of the planning application with reference 22/03045/VAR by the London Borough of Newham (**LBN**). The Appeal seeks planning permission for certain amendments to the approved CADP1 Planning Permission granted on appeal in 2016 (**the Appeal Proposals**) in respect of London City Airport (**the Airport**).
- 1.2. The Appeal has been given Planning Inspectorate reference no: APP/G5750/W/23/3326646 and a public inquiry into the Appeal opens on 5 December 2023.
- 1.3. The CADP1 Section 106 Agreement (**the S106 Agreement**) was entered into on 27 April 2016 and since been subject to four deeds of variation [CD12.1 to CD12.5]. In connection with the Appeal Proposals, the Airport, the Council (**LBN**) and Transport for London (**TfL**) have agreed to enter into a further Deed of Variation to the S106 Agreement (**the DoV**) so as to secure a mitigation package to address residual impacts associated with the Appeal Proposals and ensure that these respond positively to planning policy requirements.
- 1.4. This Statement sets out the manner in which each of the principal obligations comprised in the DoV would comply with the tests set down in Regulation 122 of the Community Infrastructure Levy (**CIL**) Regulations 2010 (as amended) (**the CIL Regulations**) [CD3.1.3].
- 1.5. Regulation 122 of the CIL Regulations provides that a planning obligation may only constitute a reason for granting planning permission for development if the obligation is:
  - 1.5.1. necessary to make the development acceptable in planning terms;
  - 1.5.2. directly related to the development; and
  - 1.5.3. fairly and reasonably related in scale and kind to the development.
- 1.6. Compliance with the CIL Regulations in respect of each of the principal obligations is considered in the order that such obligations appear in the DoV.
- 1.7. This Statement has been prepared by the Airport in consultation with LBN. As stated in the recitals to the DoV it is the shared view of the parties that each of the obligations referred to complies with the requirements of the CIL Regulations.

## **2. Additional Employment Contribution**

- 2.1. The Additional Employment Contribution is an additional financial contribution to be secured in connection with the Appeal Proposals.
- 2.2. The S106 Agreement already secures an Employment Contribution of £5,018,112 index linked towards:
  - 2.2.1. supporting people in gaining entry into work associated with the Airport and the Development including through Newham Workplace (including any equivalent replacement body); and
  - 2.2.2. ensuring local residents are given the opportunity to access jobs at the Airport or related to the Development.

- 2.3. The Airport has, to date, paid all instalments of the Employment Contribution with the exception of the instalments due on the seventh, eighth and ninth anniversaries of the Commencement of Development.
- 2.4. The S106 Agreement requires the Airport to continue to pay these contributions but the DoV will secure the contribution of an additional one million, eight hundred and ninety-seven thousand and eight hundred pounds (£1,897,800 index linked), payable in three equal instalments. The first of these will be payable when the Airport handles more than 6.5 million passengers per annum on the basis that the additional instalments should be related to the job opportunities created by future growth resulting from the Appeal Proposals. The second and third instalments will be payable on the first and second anniversary of the payment of the first instalment. This meets the requirements of policies J1 and J3 of the Newham Local Plan [CD3.4.1] concerning skills and access to employment.
- 2.5. The £1.9m is based on the projected uplift in jobs over the 2019 baseline (1,200 jobs, rounded to the nearest hundred jobs) and uses the formula at paragraph 4.18 of [LBN's Local Plan Viability Study](#) which has a target of 50% of jobs for Newham residents at a cost of £3,163. This can be shown in the following table:

	<b>Increase over 2019</b>
Contribution per job	£3,163
Additional jobs	1,200
LBN jobs (target)	50%
LBN jobs (target)	600
<b>Jobs/skills contribution</b>	<b>£1,897,800</b>

- 2.6. Accordingly, this obligation is considered to be compliant with Regulation 122 of the CIL Regulations.
3. **District Heating / Eastern Energy Centre**
- 3.1. The DoV secures a number of amendments to the existing obligations in relation to delivery of the Eastern Energy Centre (**EEC**) and connection of the Airport to a District Heating Network (**DHN**).
- 3.2. In particular, if an Approved Heating Supply Options Study (as defined in the S106 Agreement) finds that a DHN connection is not financially viable prior to commencement of the EEC or a Heating Options Study (again, as defined in the S106 Agreement) is not triggered, LCY may deliver the EEC, subject to the proviso that this no longer utilises a CHP system but instead utilises lower emissions technology (including but not limited to technologies such as on-site heat pumps and photovoltaics) and that a DHN connection is safeguarded.
- 3.3. The Energy Strategy submitted with the Appeal Proposals included a number of proposals to move away from gas fired CHP (previously consented as part of the CADP works) to more sustainable solutions such as heat pumps and solar.

- 3.4. This is in accordance with the GLA's Energy Hierarchy (London Plan Policy SI2 [CD3.3.1] and Newham Local Plan Policy SC2 [CD3.4.1] which requires all development to minimise and reduce carbon emissions and to meet London Plan zero carbon targets.
- 3.5. This obligation will, therefore, contribute to the reduction of carbon emissions from airport buildings in accordance with the Energy Strategy and relevant development plan policy.
- 3.6. Accordingly, this obligation is considered to be compliant with Regulation 122 of the CIL Regulations.

#### **4. London City Airport Community Fund**

- 4.1. The DoV secures enhancements to the existing London City Airport Community Fund (registered charity number 1182642 – the London City Airport Community Fund (**the Fund**)).
- 4.2. In connection with the Appeal Proposals, the DoV secures payment of £3.85m into the Fund for a period of 10 years from implementation of the s73 permission. This will equate to £385,000 per annum compared to £75,000 currently.
- 4.3. The size of the Fund is based on the following considerations.
- 4.4. The current Community Fund is significantly over-subscribed; last year it received 148 applications which were mainly from small grassroots organisations seeking less than £3,000. The uplift in contributions towards the Fund will enable a wider range of projects to be funded (including, in particular, facilitating significant investment in overflowed public spaces close to the Airport) and, related to this, the Fund's Grant Making Policy will include an appropriate uplift in the priority value of each grant (currently £3,000) but with scope for projects in excess of any such value to be considered if they offer exceptional community benefit. While the increased size of the Fund will enable the Airport to support significantly more grassroots organisations and projects, it is recognised that there is a need to support larger-scale projects and particularly those that improve open space in the areas that are affected by aircraft noise.
- 4.5. The remit of the Fund is, accordingly, expanded to cover eligible projects which have as their objective 'Improving amenity in areas local to the Airport and along its flight paths including, but not limited to, creation of/improvements to playgrounds, parks, sporting facilities and community recreation facilities'.
- 4.6. The enhanced Fund could be used to fund a variety of community interventions that improve amenity in areas local to the Airport and along its flight paths, particularly to help compensate for the reduction in curfew on Saturday afternoons and associated noise impacts in outdoor areas. It provides the opportunity to fund the provision of small open spaces and improved linkages near the Airport, as suggested in the Royal Docks and Beckton Riverside Opportunity Area Planning Framework.
- 4.7. For instance, the Fund could support the provision of sports facilities. The following sets out the current costs as estimated by Sport England:

	Area (sqm)	Capex
Cricket nets (2)	96	£40,000
MUGA (Macadam, fenced, lighting)	782	£180,000
Grass football pitch (full-size)	7420	£110,000
Skate Park	720	£185,000
Tennis courts (2x macadam, fenced, lighting)	1227	£245,000

4.8. In addition, it could support children's play space and informal open space. These typically cost between £150 and £200 per sqm to improve or provide. In sum, the Fund is expected to enable the Airport to support<sup>1</sup> twice as many grassroots projects and (on average) one major sports project and one major park project per year. However, it is likely that there may also be a need for intermediate level grants (£5,000 to £20,000) or for co-funding of larger scale projects to leverage the benefits of the Fund. A possible split of the Fund would be:

- £150,000 – small grants (<£5,000)
- £100,000 – intermediate grants (£5-20,000)
- £135,000 – large grants

4.9. This accords with Newham Local Plan Policy SP2 [CD3.4.1] to provide *“new or improved inclusive open space and sports facilities, including good quality, secure and stimulating play space and informal recreation provision for young people and accessible natural greenspace and bluespace to encourage greater participation in physical activity”*.

4.10. Accordingly, this obligation is considered to be compliant with Regulation 122 of the CIL Regulations.

## 5. Sustainable Transport Fund

5.1. The DoV secures the establishment by the Airport of a Sustainable Transport Fund (**STF**) which is to be used towards surface access projects which contribute to the Airport achieving its mode share target.

5.2. Consistent with national policy to prioritise public transport and criteria F of Policy T8 of the London Plan [CD3.3.1], which seeks to ensure that proposals which make better use of existing airport capacity are underpinned by upgraded surface access links, it is proposed to increase the passenger sustainable transport target to 80% by 2030.

5.3. The DoV accordingly includes an obligation for the Airport to use reasonable endeavours to achieve an increase in the percentage of passenger journeys to and from the Airport being undertaken by sustainable modes of transport to 80% by 2030 and the purpose of the STF is to contribute towards meeting this target.

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<sup>1</sup> By way of example, the Council itself has spent around £350,000 of CIL and s106 funds on 7 investments in parks, play areas and other open space in the last four years. These include an outdoor gym (£50,000), play area improvements (£55,000-£100,000) and a range of smaller improvements with a total average cost of £50,000.

- 5.4. The DoV includes a covenant for the Airport to establish the STF and to operate this for no less than 7 years from the implementation of the s73 permission, making available a minimum of £2 million per annum for these purposes.
- 5.5. The STF is to be applied towards ‘qualifying initiatives’ aimed at contributing towards the Airport achieving its mode share targets, reducing the impact of private car journeys, decreasing carbon and pollution emissions and encouraging the use of sustainable modes of transport (these being ‘qualifying purposes’).
- 5.6. ‘Qualifying initiatives’ comprise feasibility studies, mode share monitoring and analysis, direct funding of sustainable transport initiatives (including infrastructure) and contributions towards LBN or TfL for the delivery of sustainable transport initiatives (including transport service subsidies and infrastructure) all of which have as their aim the achievement of the qualifying purposes set out above.
- 5.7. A flexible approach is required to the application of the STF to ensure that initiatives can respond to how modal share targets are being achieved and can adapt to working with transport providers and others (whose priorities and investment decisions typically change). The STF could fund a range of projects such as subsidising earlier DLR services, providing better connectivity between the Airport and the Elizabeth Line and other initiatives to encourage staff and passengers to use public transport. The DoV identifies these among several ‘priority projects’ to be considered by the Transport Forum which will make recommendations to the Airport for allocation of the STF. The quantum of the STF has been determined by reference to achieving the target mode share, potentially through these ‘priority projects’, as set out in Table 1 below.
- 5.8. The ‘priority projects’ are at different stages of development and final costings are not yet known. Therefore, Table 1 provides indicative costings which have been used to inform the quantum of the STF; while costs in the table total more than £2 million per annum, the phasing means that not all measures will be required in every year.

**Table 1: Priority projects, indicative costing and expected phasing**

Project	Description	Cost range (per annum)	Phasing
Earlier DLR services to and from the Airport	London City Airport is in discussion with TfL and DLR to run a minimum of two additional trains to the airport before current service starts at 5.26am. This will benefit staff and passengers.	£1.0m	Medium term, then ongoing
Better connectivity between the Airport and the Elizabeth Line	A study has been undertaken this year to identify the optimal route for passengers wishing to connect to/ from the Elizabeth Line. Two options have been identified and discussions are underway with TfL around specific improvements which would enhance the customer experience at stations and on the train/DLR, e.g., digital wayfinding.	£0.25m	Short term

Improvement of local bus routes serving the Airport (including enhancing frequencies and assisting the delivery of new routes)	Relatively few passengers and staff currently use bus to travel to the airport. Discussions are ongoing with TfL about how TfL services can better meet the needs of passengers and staff, in particular early in the morning. The airport intends to also consider the feasibility of a dedicated shuttle service, potentially working with other local stakeholders. It may be that the service can be self-funding after some initial investment.	£0.5m	Short to medium term
Integration with future bus routes south of the Thames via the Silvertown Tunnel	The opening of the Silvertown Tunnel is expected to improve journey times south of the river, with new bus and cycle crossings available. The airport will look to optimise connectivity to those new routes and may need to provide good first/last mile connections to them.	£0.25m	Medium term
Measures within the Airport's staff and passenger Travel Plans (including future reviews)	The airport is implementing a range of measures in the current Travel Plan that include infrastructure improvements (e.g., cycle parking) improving information (e.g., "waytowork" campaign) and encouragement (e.g., incentives).	£0.5m	Short term and ongoing
Measures to improve walking and cycling infrastructure around the airport and within the Royal Docks	Walking and cycling links to the airport are currently poor and the airport would like to make funds available to ensure that future active travel infrastructure improvements in Newham are connected to the airport by the same high-quality infrastructure.	£0.5m	Medium term
Wayfinding improvements to Canning Town station	The airport has recently discussed this with TfL and understand a proposed set of improvements for digital wayfinding has been identified but is currently unfunded. The costs are unknown (and outdated) but we expect TfL to share more detail on the improvements and costs shortly.	£0.5m	Short term

Source: Steer

- 5.9. Accordingly, this obligation is considered to be compliant with Regulation 122 of the CIL Regulations.

## 6. Carbon and Climate Change Action Plan

- 6.1. The DoV secures the submission for LBN's approval of a Carbon and Climate Change Action Plan (**CCCAP**) setting out measures which aim to deliver the Airport's targets to become London's first net zero airport by 2030 and be one of the first airports in the UK to facilitate zero emissions flight. An outline CCCAP was submitted with the planning application.

- 6.2. In particular, the CCCAP is required to include targets to:
- 6.2.1. reduce the emissions the airport controls (Scope 1 and 2) to net zero by 2030 and to zero by 2040;
  - 6.2.2. work with airlines to reduce flight emissions to net zero by 2050; and
  - 6.2.3. buildings associated with the Development to achieve BREEAM 'Very Good' certification as a minimum.
- 6.3. The first target, which relates to non-aviation operational emissions, aligns with London Plan Policy T8B [CD3.3.1] which states that development proposals should fully meet their external and environmental costs including in respect of climate change.
- 6.4. The second target relates to Scope 3 operational emissions, which are not emissions controlled by the Airport (but which it can influence) and reflects national 'Jet Zero' policy [CD3.5.7] to reduce aviation emissions to net zero by 2050.
- 6.5. The third target relates to Scope 3 construction-related emissions which occur due to construction related activities, processes and from GHG emissions embedded in construction materials. Again, these are emissions which the Airport does not control (but which it can influence).
- 6.6. The DoV includes a covenant for the Airport to use reasonable endeavours to implement the CCCAP and work towards achieving the targets set out therein.
- 6.7. Accordingly, this obligation is considered to be compliant with Regulation 122 of the CIL Regulations.

## **7. Enhancements to Sound Insulation Schemes**

- 7.1. The DoV secures a number of enhancements to the existing Sound Insulation Scheme (**SIS**) secured by the S106 Agreement. Subject to eligibility criteria, the SIS operates on the basis that properties will be treated if they are either exposed to the relevant noise levels in the preceding calendar year or predicted to be exposed to those levels in the forthcoming calendar year.
- 7.2. The purpose of these enhancements is to offer appropriate 'compensatory mitigation' to those potentially affected by aircraft noise in accordance with the Aviation Policy Framework.
- 7.3. For the Second Tier, eligibility is expanded with an additional criterion to be introduced from implementation of the s73 permission based on the 55 dB  $L_{Aeq,8h}$  summer night-time contour. This is to address the additional flights proposed in the morning so as to ensure that everyone exposed to air noise above the SOAEL (as identified in the ES) is eligible for sound insulation works from commencement of the Appeal Proposals.



- 7.4. For the Intermediate Tier, the changes provide for the Airport to replace the fixed cash grant with an increased contribution towards high performance double glazing and also manage installation. This is designed to increase take-up of the scheme.
- 7.5. The DoV also extends eligibility to the Intermediate Tier such that, from implementation of the s73 permission, works will also be offered to dwellings within the 60 dB  $L_{Aeq,16h}$  summer weekend daytime contour. The extension to eligibility based on weekend noise is again to offer treatment to all of those above the SOAEL (as identified in the ES) from commencement of the Appeal Proposals.
- 7.6. In addition, the DoV secures the phasing in of an extension of the summer daytime threshold for the Intermediate Tier from the currently required 63 dB  $L_{Aeq,16h}$  which is the SOAEL identified in the ES. The eligibility threshold will be lowered to 62 dB  $L_{Aeq,16h}$  from 2027, 61 dB  $L_{Aeq,16h}$  from 2029 and 60 dB  $L_{Aeq,16h}$  from 2031.
- 7.7. The SIS is also amended to ensure that the age and location criteria which determine eligibility for each scheme follow the approach taken previously in the two previous S106 Agreements, including the CADP S106 Agreement. This means that after the date of the DoV, new development that is permitted and built within the 'future growth' scenario 57dB contour (as relevant to the First Tier scheme), the 'future growth' scenario 66dB contour (as relevant to the Second Tier scheme) or the 'future growth' scenario 60dB contour (as relevant to the Intermediate Tier scheme) will be expected to make provision for adequate noise insulation and will not benefit from the SIS, in accordance with the agent of change principle. All other properties located within (or outside) those contours (both existing properties and those permitted before the date of the DoV and built subsequently), will (subject to other existing criteria) be eligible under the 'age and location' criteria for each scheme.
- 7.8. The proposed enhancements to the SIS therefore offer insulation where levels of exposure are above SOAEL which accords with the aim of the Noise Policy Statement for England [CD3.7.2] which is to avoid significant adverse effects. In addition, the changes to the SIS reflect the advice from Government in national aviation policy to the effect that the noise insulation policy threshold should be extended beyond the 63 dB  $L_{Aeq,16hr}$  contour to the 60 dB  $L_{Aeq,16hr}$  contour and that all airports should review the effectiveness of existing sound insulation schemes (paragraph 3.122, Aviation 2050: The Future of UK Aviation, 2018 [CD3.5.4]). The enhanced SIS is also designed to mitigate noise impacts (and associated environmental and health impacts) of the Appeal Proposals in accordance with London Plan policies T8 and D13 respectively, as well as Local Plan policies SP2 and SP8.
- 7.9. The DoV secures the entry into new Neighbouring Authority Agreements to incorporate the SIS enhancements to enable the relevant authorities (Tower Hamlets and Greenwich) to enforce the SIS directly in their respective areas.
- 7.10. Accordingly, the obligation for the Airport to operate the enhanced SIS from implementation of the s73 permission is considered to be compliant with Regulation 122 of the CIL Regulations.