

**TOWN AND COUNTRY PLANNING ACT 1990**

**LONDON CITY AIRPORT**

**AMENDMENT OF CONDITIONS AT LONDON CITY AIRPORT**

**TO ACCOMMODATE 9 MILLION PASSENGERS PER ANNUM**

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**CLOSING SUBMISSIONS**

**ON BEHALF OF**

**LONDON CITY AIRPORT LIMITED**

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**INTRODUCTION**

1. Airports, and airport expansion, play a critical role in boosting both global and domestic connectivity and levelling up in the UK.<sup>1</sup> National policy recognises the role of airports as engines of economic growth, supporting trade, inward investment, tourism, economic prosperity and significant numbers of jobs. It is for this reason that Government policy remains supportive of airports bringing forward expansion plans in order to make best use of their existing infrastructure.
2. It is in this context that London City Airport ('the Airport') seeks to amend certain conditions that currently limit its operations. These amendments will have a substantial positive socio-economic impact on the local area. This translates into real world benefits for real people; opportunities for skills training, jobs, the chance to travel from their local airport, increased economic activity in their local area, and further investment in the place that they live and work. These benefits are particularly important in the context of the local area around London City Airport.
3. The Airport sits in the heart of the Royal Docks and Beckton Riverside Opportunity Area, one of the largest opportunity areas in London. The Area has been identified to provide some

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<sup>1</sup> Flightpath to the future ('Fttf'), pdf page 28 (CD3.5.6).

30,000 new homes and 41,500 new jobs over the next 20 years.<sup>2</sup> The Airport is recognised as an “anchor” economic asset of regional and international importance,<sup>3</sup> a “key local employer”<sup>4</sup> and a “catalyst for investment within the area”.<sup>5</sup> In 2019, the Airport employed 2,310 on site<sup>6</sup> and generated a further 850 jobs within the local area or 1,370 across London, through its supply chain and induced effects.<sup>7</sup> Local Plan policy supports the optimisation of existing capacity at the Airport, alongside further mitigation of its environmental impacts.<sup>8</sup>

4. The importance of job creation for the local area is significant. Parts of East London are recognised as some of the most deprived in the UK.<sup>9</sup> The identification of East London as a priority area for levelling up is largely driven by unemployment and a lack of jobs.<sup>10</sup> The Proposed Amendments represent a significant opportunity for the local area and could play a role in “putting Newham back on the map”.<sup>11</sup>
5. The Proposed Amendments will allow the Airport to recover from the effects of the COVID-19 pandemic. In doing so, it will create the conditions in which there is a strong incentive for airlines to re-fleet, thereby delivering real noise benefits throughout the week. This will support the Airport’s recovery, whilst bringing significant economic, consumer and other benefits.
6. Before going on to consider the Airport’s positive case for the Proposed Amendments and the issues in dispute, it is important to deal with some ‘preliminary points’. Please note that these closing submissions refer extensively to the ‘Day’ on which evidence was given. Due to the various adjournments that have occurred, identifying the correct inquiry ‘Day’ is not always straight forward. The ‘Days’ in this closing refer to the ‘dates’ in the footnote below<sup>12</sup>.

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<sup>2</sup> OAPF, page 11 (CD3.10.1).

<sup>3</sup> Royal Docks and Beckton Riverside Opportunity Area Framework (‘OAPF’), page 113 (CD3.10.1).

<sup>4</sup> OAPF, section 1.1 (CD3.10.1).

<sup>5</sup> Newham Local Plan, para 1.23 (CD3.4.1).

<sup>6</sup> 2,060 FTE. Sean Bashforth, Proof, para 5.13.

<sup>7</sup> Louise Congdon, Proof, Table 6.2, page 51.

<sup>8</sup> Newham Local Plan, policy S3(xviii) (CD3.4.1).

<sup>9</sup> Environmental Statement, Socio-economics, para 7.5.35 (CD1.14). A large proportion of LBN falls within the top 30% most deprived areas in relation to income and employment. The Airport itself lies within an area that is amongst the 20% most deprived in the UK and is close to significant areas within the 10% most deprived areas with very high levels of deprivation.

<sup>10</sup> Louise Congdon, Proof, para 6.2.4.

<sup>11</sup> Glyness Webb, local resident.

<sup>12</sup> Day 1 – Tues 5/12/23; Day 2 – Thurs 7/12/23; Day 3 – Tues 12/12/23; Day 4 – Mon 15/01/24; Day 5 – Tues 16/01/24; Day 6 – Weds 17/01/24; Day 7 – Thurs 18/01/24; Day 8 – Fri 19/01/24; Day 9 – Tues 23/01/24; Day 10 – Thurs 25/01/24; Day 11 – Fri 26/01/24

## SOME PRELIMINARY POINTS

### Context and nature of the application

#### Planning context

7. The Airport was originally granted planning permission in May 1985.<sup>13</sup> Operating hours were restricted to 0630 to 2200 Mondays to Saturdays and 0900 to 2200 on Sundays and public holidays, with an exception being made in emergencies.<sup>14</sup> Since then, a number of planning permissions and variations have been granted. A weekend curfew was introduced in 1998, alongside a doubling of permitted annual air traffic movements ('ATMs'), including changes to ATMs at weekends.<sup>15</sup>
8. The London City Airport Development Programme ('CADP1') planning permission was granted in July 2016 by the Secretaries of State for Transport and Communities and Local Government. This permitted comprehensive upgrades to the infrastructure and passenger facilities at the Airport and introduced the 6.5 million annual passenger cap and various other controls and mitigation measures.<sup>16</sup> Of particular relevance to the current appeal, the CADP1 planning permission was granted subject to the following conditions:<sup>17</sup>
  - a. Condition 17<sup>18</sup> restricts the times that aircraft can take off and land at the Airport, limiting these hours to between 0630 and 2200 on Monday to Friday; between 0900 and 2200 on Bank Holidays and Public Holidays;<sup>19</sup> 0630 and 12.30 on Saturdays; and 1230 and 2200 on Sundays.<sup>20</sup>
  - b. Condition 23 restricts Actual Aircraft Movements at the Airport to a maximum of 111,000 per calendar year. It also imposes daily limits with a maximum of 100 per day on Saturdays; 200 per day on Sundays (but not exceeding 280 on any consecutive Saturday and Sunday); 592 per day on weekdays; and individual limits for specified Bank Holidays.

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<sup>13</sup> Sean Bashforth, Proof, para 2.3.

<sup>14</sup> Sean Bashforth, Proof, para 2.4.

<sup>15</sup> Sean Bashforth, Proof, para 2.5.

<sup>16</sup> Sean Bashforth, Proof, para 2.11.

<sup>17</sup> **CD7.8.**

<sup>18</sup> As noted above, the condition that imposed the weekend curfew was first introduced in 1998 and retained when CADP1 was granted.

<sup>19</sup> With the exception of Christmas Day, which is addressed in condition 27.

<sup>20</sup> Similar restrictions apply for aircraft maintenance and repair (condition 8) and ground running, testing and maintenance (condition 50).

- c. Condition 25 restricts Actual Aircraft Movements between 0630 and 0659 hours on Mondays to Saturdays to six (excluding Bank Holidays and Public Holidays when the Airport is closed for the use or operation of aircraft between these times). Condition 26 requires that the number of Actual Aircraft Movements in the period between 0630 hours and 0645 shall not exceed two on any of these days.
  - d. Condition 43 restricts the passenger throughput of the Airport to a maximum of 6.5 mppa.
9. In addition, a series of other conditions impose environmental controls and restrictions on the Airport, including the Aircraft Noise Categorisation Scheme (condition 18); the Noise Management and Mitigation Strategy ('NOMMS') (condition 31); a condition to fix the size of the 57dB  $L_{Aeq,16h}$  contour (condition 33); as well as conditions relating to sustainability, biodiversity, air quality, lighting and surface access, amongst others.<sup>21</sup>
10. Due to the pause in the CADP1 construction programme in 2020 during the pandemic, it is now anticipated that the remaining CADP1 works (including the new terminal buildings) will be built out over a more prolonged period. The programme for the completion of the remaining CADP1 construction works depends upon the growth in passenger numbers, operational and service requirements and financial considerations.<sup>22</sup> The proposed amendments would enable the CADP1 construction works to be completed earlier than they would otherwise be delivered.<sup>23</sup>

#### The Proposed Amendments

11. The proposals that are the subject of this appeal seek to amend a number of conditions that were imposed on the CADP1 permission. The application was made under section 73 of the Town and Country Planning Act 1990.
12. In summary, the amendments would facilitate the following (together, 'the Proposed Amendments'):<sup>24</sup>
- a. An increase in the annual passenger cap to allow the Airport to handle up to 9 mppa;

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<sup>21</sup> **CD7.8.**

<sup>22</sup> ES, Chapter 3, para 3.4.13 (**CD1.10**).

<sup>23</sup> ES, Chapter 3, para 3.4.13 (**CD1.10**). As explained further below, the ES assessed the core development case, as well as faster and slower growth scenarios as sensitivities.

<sup>24</sup> Sean Bashforth, Proof, para 5.1.

- b. Changes to the Airport's opening hours at the weekend to allow the Airport to operate for an additional six hours on a Saturday afternoon (with an additional hour for up to twelve arrivals during the summer season<sup>25</sup>); and
  - c. Changes to the limits on Airport's operations during weekdays (Mondays to Saturdays) to permit three additional flights in the first half hour of morning operations (nine instead of six between 0630 and 0659, of which four would be allowed, instead of two, between 0630 and 0645).
13. The Proposed Amendments also include associated changes to aircraft maintenance and terminal opening hours to align with later opening on Saturday afternoons,<sup>26</sup> and minor design changes to the CADP1 permission. There are no proposed changes to the permitted number of aircraft movements a year,<sup>27</sup> the permitted maximum runway movements per hour, the number of aircraft stands or any other physical changes to airfield infrastructure.
14. It is significant that the additional operating hours in the mornings and on Saturday afternoons are to be limited by condition to 'new generation' aircraft only.<sup>28</sup> This means that the take up of these slots will inevitably be gradual, as acknowledged by LBN.<sup>29</sup> Due to the length of time that it will take airlines to order and take delivery of these aircraft, it will simply not be possible for these slots to be fully utilised immediately.<sup>30</sup> As explained in more detail later in these closing submissions, the limitation on these slots also has implications for noise levels for the rest of the week; in short, once airlines have re-fleeted, those aircraft will be used throughout the week thereby delivering an improvement in overall noise effects.
15. Before moving on to consider the rationale behind the Proposed Amendments, it is necessary to respond to an argument advanced on behalf of LBN for the first time through cross-examination of the Airport's witnesses. Mr Straker KC appeared to suggest that it was not appropriate for the Airport to seek to vary the conditions attaching to the CADP1 permission in circumstances where the Secretaries of State concluded that they were 'necessary' and

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<sup>25</sup> Defined as British Summer Time, during which as part of the Proposed Amendments it is proposed that the Airport will be allowed up to 12 additional arrivals between 1830 and 1930 on Saturdays.

<sup>26</sup> Sean Bashforth, Proof, para 4.4. Full details of the Proposed Amendments are set out in Appendix 2 to the Planning Statement (**CD1.5**).

<sup>27</sup> Condition 23 of the CADP1 permission limits the annual aircraft movements to 111,000 (**CD7.8**).

<sup>28</sup> New generation aircraft comprise aircraft such as the Embraer-E2 family or Airbus A220 series aircraft, which are cleaner, quieter and more fuel efficient than much of the existing fleet at the Airport.

<sup>29</sup> It was accepted by Rupert Thornely-Taylor in XX (Day [x]) that the take-up would be "*gradual*".

<sup>30</sup> Rupert Thornely-Taylor, XX (Day 7).

‘served a planning purpose’ when imposed in 2016.<sup>31</sup> There are four points to make in response, as follows.

16. First, an application under section 73 requires the decision maker to consider only the question of the conditions subject to which planning permission should be granted. In other words, the decision maker must recognise that planning permission has already been granted for the development permitted by the ‘parent permission’. The grant of an application under section 73, however, produces a new planning permission. As such, the application must be determined in accordance with the development plan and other material considerations at the time of the determination.<sup>32</sup>
17. Second, it is important to note that the Airport’s section 73 application does not solely seek to amend condition 17 to allow Saturday afternoon operations. The application also seeks to vary other conditions, including the 6.5 mppa passenger cap. Thus it is necessary to consider the ‘need’ for the Proposed Amendments, their socio-economic and others benefits, as well as their environmental effects.
18. Third, whilst there is no dispute that condition 17, which restricts Airport operating hours, was deemed to meet the relevant planning tests in 2016, that does not mean that it cannot now be amended as a matter of principle. Indeed, the very purpose of a section 73 application is to enable conditions that were considered necessary when imposed to be amended, whether those conditions were imposed by the Secretary of State, an Inspector or a local planning authority. This is clearly recognised in the relevant case law.<sup>33</sup> Such a power is not predicated on demonstrating that the conditions were not necessary when originally imposed. Whether a condition ought to be amended subsequently is a matter to be determined in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004 (‘PCPA 2004’).
19. Fourth, as explained by Mr Bashforth, the circumstances in which condition 17 was retained by the Secretaries of State in 2016 were significantly different to those that pertain now.<sup>34</sup> The CADP1 proposals sought a change in activity at the Airport as well as significant changes to infrastructure. It was the first time that a passenger cap was introduced, as well as a peak

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<sup>31</sup> Mr Straker KC, on behalf of LBN, in a series of questions asked to Ms Congdon in XX (Day 7).

<sup>32</sup> *Pye v Secretary of State for the Environment, Transport and the Regions and North Cornwall DC* [1998] 3 P.L.R. 72, page 44: “An application made under section 73 is an application for planning permission (see section 73(1)). The local planning authority’s duty in deciding planning applications is to have regard to both the development plan, which brings into play section 54A [now section 38(6) of the Planning and Compulsory Purchase Act], and to any other material considerations (section 70(2))”.

<sup>33</sup> See fn 32 above.

<sup>34</sup> Sean Bashforth, EiC (Day 11).

hourly movement cap. Condition 17 therefore formed part of an overall package of mitigation measures that were put forward in order to meet the environmental effects of that particular proposal. In particular, at that time, the environmental impact assessment showed a 57dB noise contour of 9.1km.<sup>35</sup> The mitigation that was considered to be necessary in 2016 was predicated upon the environmental effects of *that* proposal, in the context of the particular socio-economic benefits that *that* development would deliver. The Proposed Amendments seek to change part of the mitigation currently in place, but in the context of a different set of environmental effects (and a lesser overall noise impact<sup>36</sup>), an enhanced package of other mitigation measures, and additional socio-economic and consumer benefits.<sup>37</sup> One cannot look at the change in Saturday operating hours in isolation, but must consider all of these elements in the round as part of the planning balance.<sup>38</sup>

#### Development of and rationale for the Proposed Amendments

20. In accordance with the Aviation Policy Framework,<sup>39</sup> the Airport has produced a Masterplan, which is publicly available. The current masterplan was published in 2020, which replaced the previous masterplan that was published in 2006. The 2006 masterplan indicated an intention on the part of the Airport to reach 6 mppa by 2025 and 8 mppa by 2030, with an associated 171,000 ATMs. The 2020 masterplan identified an intention to serve to 11 mppa by the mid to late 2030s.<sup>40</sup> Since the publication of the 2006 masterplan, the introduction of larger aircraft have allowed more passengers to be served with fewer ATMs. It is for this reason that there is no proposal to increase the current ATM cap in association with the increase to 9 mppa.
21. Whilst airport masterplans have no statutory status, they are clearly required by the Aviation Policy Framework and their primary objective is to provide *“a clear statement of intent on the part of an airport operator to enable future development of the airport to be given due consideration in local planning processes.”*<sup>41</sup> The Airport’s masterplan was produced following

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<sup>35</sup> Condition 33, pdf page 9 (CD2.7).

<sup>36</sup> As accepted by LBN and HACAN East; Rupert Thornely Taylor, XX (Day 7) and Jake Farmer, XX (Day 10). The contour associated with the Proposed Amendments is less than the 2019 contour and 20% less than that currently permitted. Pdf page 43 (CD1.15) and pdf page 9 (CD2.7).

<sup>37</sup> Sean Bashforth, EiC (Day 11).

<sup>38</sup> Sean Bashforth, EiC (Day 11).

<sup>39</sup> Pdf page 69, paras 4.11 – 12 (CD3.5.1). Annex B of the APF provides guidance on the content of masterplans.

<sup>40</sup> Pdf page 37 (CD5.1).

<sup>41</sup> Pdf page 69, para 4.11 (CD3.5.1).

a 16-week public consultation in 2019.<sup>42</sup>

22. The CADP1 development represents a significant investment in the physical infrastructure at the Airport.<sup>43</sup> The CADP1 permission was driven by the need to address some of the key physical constraints on capacity at the Airport, including the existing taxiway, the number of aircraft stands and the size of the terminal building.<sup>44</sup> In this regard, it represented the ‘optimum’ capacity for the number and type of passengers that it was seeking to serve at that time.<sup>45</sup> One key aspect of this was the significant proportion of business passengers, which resulted in a diurnal profile that saw strong peaks in the morning and evening, but little activity in the interpeak.<sup>46</sup> This profile of movements meant that growth was particularly constrained by the ability of the terminal to handle the busy hour peak.<sup>47</sup> The air traffic demand forecasts that underpinned the CADP1 application ran up to 2023 and 2025, but not beyond.<sup>48</sup>
23. As explained by Mr Bashforth, much has changed since 2016 when the CADP1 permission was granted.<sup>49</sup> The way in which airlines operate has changed,<sup>50</sup> in part in response to the challenging economic circumstances that have prevailed during and since the COVID-19 pandemic. The demand for leisure travel is growing,<sup>51</sup> and the airlines are seeking to serve a greater proportion of leisure passengers than has historically been the case. Indeed, the importance of meeting consumer needs is recognised in the most recent statements of Government policy.<sup>52</sup> It is necessary for the Airport to respond to the changes in underlying demand and the business operations of the airlines.
24. It is in this context that the Airport proposed amendments to the conditions attaching to CADP1, in respect of which the Airport undertook public consultation between July and September 2022.<sup>53</sup> It should be noted that there is no proposal to increase the overall number of ATMs, nor is there any proposal to change the current restriction on Sunday operations. Despite support for the proposals from airlines, passengers and businesses, concerns were

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<sup>42</sup> Pdf pages 6 – 7 (**CD5.1**).

<sup>43</sup> Pdf page 28 (**CD5.1**).

<sup>44</sup> Louise Congdon, Re-X (Day 7).

<sup>45</sup> At that time the Airport served over 50% business passengers, as explained by Louise Congdon, Re-X (Day7).

<sup>46</sup> Louise Congdon, Re-X (Day 7). See also Figure 3.11A (**CD2.6.10**).

<sup>47</sup> Louise Congdon, Re-X (Day 7).

<sup>48</sup> Sean Bashforth, EiC (Day 11). As explained by Mr Bashforth, in this regard, CADP1 was never intended to be “long term”. See also **CD2.6.10**.

<sup>49</sup> Sean Bashforth, EiC (Day 11).

<sup>50</sup> Sean Bashforth, EiC (Day 11).

<sup>51</sup> This is not a matter in dispute.

<sup>52</sup> In particular, Fttf (**CD3.5.6**) and the OANPS (**CD3.7.3**).

<sup>53</sup> Sean Bashforth, proof, para 2.18.



expressed by residents about the impact of increased operating hours. It was as a result of this feedback that the Airport reduced the proposed additional Saturday opening times from 2200 to 1830.<sup>54</sup>

25. It has been suggested by LBN that the Airport should have abandoned the proposal to extend Saturday operating hours altogether, on the basis that (i) the afternoon is arguably more sensitive than Saturday evenings; and (ii) the same concerns of residents applied in respect of both parts of the day.<sup>55</sup> There are two points to make in response to this.
26. First, as explained by Ms Congdon, Saturday afternoons are particularly important for leisure travel. By extending the operating hours on Saturdays, it allows airlines to carry out more aircraft rotations, as well as allowing a wider network of destinations to be served.<sup>56</sup> At present, the restrictions on operating hours mean that the number of 'out and back' trips on a Saturday morning are limited, with many aircraft unable to return to the Airport before the 1230 curfew. For the same reason, the restrictions also mean that popular leisure destinations that are further afield cannot be served, as the aircraft and crew could not return in time for the start of the curfew. As explained by Ms Congdon, the current restrictions mean that aircraft cannot be used efficiently. Indeed, airlines have to move their aircraft elsewhere in order to operate them over the weekend. These flights, although not technically 'positioning flights' are ones for which there is no commercial demand.
27. The Proposed Amendments therefore strike a fair balance between the views of local residents and the delivery of significant economic, consumer and efficiency benefits that will be unlocked by the increased flexibility. They allow the existing and consented infrastructure to be used more efficiently across the week as a whole by creating the conditions whereby airlines are incentivised to grow and use the existing capacity fully to meet a balanced mix of business and leisure demand on weekdays. This is achieved in part through utilising the inter-peak period that is not typically required for business travel to meet underlying leisure demand, and increasing capacity to meet local leisure needs at weekend.<sup>57</sup> This responds directly to the Government's policy of 'making best use'. The restriction of the new slots to new generation aircraft provides a powerful incentive for airlines to re-fleet earlier than they otherwise would, thereby delivering real noise benefits throughout the week.

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<sup>54</sup> Sean Bashforth, Proof, para 4.9.

<sup>55</sup> These are points put to Mr Bashforth by Mr Straker KC in cross-examination.

<sup>56</sup> Louise Congdon, Proof, para 5.4.3.

<sup>57</sup> Sean Bashforth, EIC (Day 11). Mr Bashforth described it as "*filling a gap*".

28. If the increased operations on Saturday afternoons were not included within the Proposed Amendments, the ability to meet demand for leisure travel and increase the efficiency in the use of aircraft would remain significantly curtailed and growth in passenger numbers would be significantly slower. Increasing the passenger cap alone (or in conjunction with additional early morning flights), would not address the current inefficiency in terms of aircraft utilisation.<sup>58</sup>
29. Second, there is a recognised distinction between the sensitivity of afternoons as opposed to evenings (on all days of the week) in terms of noise legislation, policy and guidance. The European metric of ‘Lden’, which considers an average annual day of aircraft traffic over a 24-hour period provides a specific penalty weighting of 5dB for noise between 1900 to 2300<sup>59</sup> to recognise its greater sensitivity, but no such penalty for the afternoon. This is also recognised in the Planning Practice Guidance for Noise that notes *“using planning conditions/obligations to restrict activities allowed on the site at certain times and/or specifying permissible noise levels differentiating as appropriate between different times of day, such as evenings and late at night.”*<sup>60</sup>
30. Importantly, the Proposed Amendments retain an 18/17-hour closure from 1830/1930 on Saturdays until 1230 on Sundays<sup>61</sup>; this will remain the longest curfew at any UK airport. The number and duration of flights on Saturdays will continue to be significantly less than the permitted flights on weekdays.<sup>62</sup>

### **Scope of the dispute**

31. Before turning to the main issues, it is worth noting quite how narrow the scope of the dispute has become by the close of the evidence. There is only one outstanding reason for refusal, which is as follows:<sup>63</sup>

*“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*

<sup>58</sup> Louise Congdon, Proof, para 5.4.3.

<sup>59</sup> Sean Bashforth, EIC (Day 11). See also Richard Greer, Proof, para 5.7.9(d).

<sup>60</sup> Paragraph 010 (**CD3.7.7**).

<sup>61</sup> There is an additional hour of operations in the ‘summer season’ (defined as British Summer Time), during which, as part of the Proposed Amendments, it is proposed that the Airport will be allowed up to 12 additional arrivals between 1830 and 1930 on Saturdays. Sean Bashforth, Proof, para 4.2.

<sup>62</sup> Sean Bashforth, Proof, para 5.6. 230 compared with 592 for a weekday.

<sup>63</sup> **CD4.4**. Reason for refusal 2 related to the lack of an updated section 106 agreement. This has now been resolved and a deed of variation to the CADP1 section 106 agreement has been agreed between the Airport, LBN and Transport for London (**INQ-30**).

*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)."*

32. It is now apparent that the objection relating to the additional early morning flights is no longer pursued by either LBN or HACAN East. In particular, Mr Thornely-Taylor accepted that the early morning flights do not give rise to a significant effect in terms of noise.<sup>64</sup> HACAN East did not give evidence specifically on the issue of additional early morning flights. In practical terms, this means that the only remaining objection to the Proposed Amendments that was identified in the reason for refusal is the introduction of flights on Saturday afternoons and the associated impact on amenity arising from air noise.
33. There is, therefore, very much that is not in dispute. In particular:
- a. There is no objection to the proposed amendment of the passenger cap to 9 mppa;<sup>65</sup>
  - b. There is no dispute that the surface transport effects of the Proposed Amendments are acceptable, and that the sustainable transport mode shift stimulated by the Proposed Amendments will be a benefit over the CADP1 permission;<sup>66</sup>
  - c. There is no dispute that the air quality effects of the Proposed Amendments are acceptable and would not be materially greater than those associated with the CADP1 permission;<sup>67</sup>
  - d. There is no dispute that carbon emissions<sup>68</sup> from non-aviation sources are not significant in the context of the CADP1 permission. Furthermore, the carbon reductions set out in the Airport's revised Energy Strategy represent a benefit over the CADP1 permission, which weighs positively in favour of the Proposed Amendments;<sup>69</sup>
  - e. It is also agreed with LBN that the carbon emissions from aviation sources are consistent with the Government's Jet Zero Strategy; that they would not materially impact the ability of the Government to meet its climate change targets and do not

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<sup>64</sup> Rupert Thornely-Taylor, XX (Day 7).

<sup>65</sup> LBN Statement of Case, para 3.3 (**CD10.2**). This is confirmed in Chris Smith's Rebuttal Proof, para 1.23.

<sup>66</sup> Officer's report, para 201 and 202 (**CD4.3.1**).

<sup>67</sup> Officer's report, para 129 (**CD4.3.1**).

<sup>68</sup> 'Carbon emissions' refers to greenhouse gas emissions as assessed in the ES, Chapter 11 (**CD1.18**).

<sup>69</sup> Officer's report, para 231 – 233 (**CD4.3.1**).

provide a reason for refusing the Proposed Amendments;<sup>70</sup>

- f. It is agreed with LBN that the health effects of the Proposed Amendments do not give rise to a reason for refusal.<sup>71</sup> There is also general agreement with the conclusions reached in the ES regarding the population health effects of the Proposed Amendments.<sup>72</sup>

- 34. It is a remarkable achievement that the airport has mitigated the effects of its proposed expansion so well that none of these other issues, which so often arise on airport expansion projects, is in issue with the local planning authority and that only one, very narrow, noise issue remains.
- 35. As a result of this, there are very many development plan policies with which the parties agree the Proposed Amendments do comply. These include parts A and F of T8 of the London Plan 2021; INF1 (strategic transport), SC5 (air quality), SC2 (energy and zero carbon), J1 (business and jobs growth) and J3 (skills and access to employment) of the Newham Local Plan (2018). This is important in the context, later, of whether the Proposed Amendments comply with the Development Plan as a whole.

#### **Main issues**

- 36. These closing submissions summarise the Airport's case on each of the following main issues:
  - a. Air traffic forecasting;
  - b. Socio-economics;
  - c. Noise; and
  - d. Planning policy and the overall planning balance, including the application of climate change policies as well as those on noise.

#### **AIR TRAFFIC FORECASTING**

##### **Introduction**

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<sup>70</sup> Officer's report, para 231 – 233 (CD4.3.1). SOCG, Table 11.1, page 31 (CD11.2).

<sup>71</sup> Officer's report, para 284 (CD4.3.1). SOCG para 13.1 (CD11.2).

<sup>72</sup> Officer's report, para 284 (CD4.3.1). SOCG para 13.1 (CD11.2).

37. The primary role of air traffic forecasting in the context of the appeal is to establish the demand, and thereby ‘need’, for growth in capacity and extended operational flexibility at the Airport, and to produce the inputs for the environmental impact assessment of the development. The air traffic forecasts also enable an understanding of how the Proposed Amendments will allow growth in the passenger throughput at the Airport and facilitate socio-economic and other benefits. The forecasting evidence of Ms Congdon also demonstrates the relationship between the Proposed Amendments and the rate of re-fleeting at the Airport.

**Definition of ‘need’**

38. Whilst not an issue raised by LBN in its Statement of Case or its written evidence, during the course of the inquiry it became apparent that a key matter in dispute was the meaning of the term ‘need’ in the context of this appeal, and the extent to which it is necessary for the Airport to demonstrate a particular ‘need’ for the Proposed Amendments. In particular, Mr Straker KC’s cross-examination of all three of the Airport’s witnesses advanced the following lines of argument: (i) that the ‘need’ advanced in the Airport’s Need Case is merely a business need on behalf of airlines; (ii) that there is no demonstrable ‘need’ for the Proposed Amendments in circumstances where there is no evidence that either the Airport or the airlines would be ‘unviable’ without the Proposed Amendments; and (iii) that there is no evidence before the inquiry of a particular ‘need’ from local people for Saturday afternoon flying.<sup>73</sup>
39. There are four points to make in response, as follows.
40. First, as a matter of principle, it is not necessary for airports to demonstrate a particular ‘need’ for their expansion proposals. As explained by Mr Bashforth, national aviation policy provides very strong in principle support for meeting demand for air passenger travel where it exists.<sup>74</sup> It is for this reason that the Airport’s Need Case, in common with the Need Cases produced in respect of every other recent airport expansion proposal, has focussed on demonstrating that demand exists in the catchment for the Airport and how its proposals will meet such demand.
41. Second, the approach adopted by the Airport in its Need Case is supported by the approach taken in other recent airport appeal decisions. In particular, the issue of whether a specific need must be demonstrated for airport development proposals was directly considered in the Stansted appeal decision in May 2021. In that decision, the panel of inspectors explained that,

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<sup>73</sup> Mr Straker KC asked Ms Congdon whether there was any evidence that residents of the London Borough of Newham were “*peculiarly disabled*” from flying on other days of the week.

<sup>74</sup> Sean Bashforth, EIC (Day 11).

in the context of MBU policy “[t]here is no requirement flowing from national aviation policy for individual planning applications for development at MBU airports ... to demonstrate need for their proposed development or for associated additional flights and passenger movements”.<sup>75</sup> In a similar vein, the Secretary of State in the Manston appeal decision found that MBU policy “does not limit the number of MBU airport developments that might be granted and does not include a cap on any associated increase in ATMs as a result of intensifying use at MBU developments.”<sup>76</sup> Finally, the panel of Inspectors in the Bristol appeal decision found that there was “clear and compelling need” for the development as evidenced by the UK Aviation Forecasts and reflected in the policy support for MBU, and that BAL’s forecasting was sufficiently robust.<sup>77</sup>

42. As explained by Mr Bashforth, these recent appeals also demonstrate that there is no policy support for suggesting (as LBN has<sup>78</sup>) that the Airport should not be allowed to expand on the basis that there is existing capacity at other London airports.<sup>79</sup>
43. Third, the interpretation of ‘need’ as being linked to the viability of airlines or the Airport as a whole represents a significant departure from the approach adopted by Mr McFadden (who was at that time the case officer) in the Officer’s Report (‘OR’). The analysis in the OR specifically considered the Need Case submitted on behalf of the Airport<sup>80</sup> and, drawing on Dr Smith’s advice, concluded that it was “not disagreed with”.<sup>81</sup> The report considered the demand forecasts produced by York Aviation and concluded that, whilst there remained elements of dispute between LBN and the Airport, LBN was satisfied that “growth [was] expected”<sup>82</sup> and that the Proposed Amendments could meet that growth.<sup>83</sup> It was on this basis that the OR concluded that “it is acknowledged that the expansion of flights into Saturday afternoon would enable the airport to make more efficient use of existing infrastructure and runways.”<sup>84</sup>
44. The approach to ‘need’ adopted by Mr McFadden in the OR was appropriately informed by the Government’s policy of ‘making best use’ and the Airport’s aviation demand forecasts.

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<sup>75</sup> Pdf page 4, para 17 (CD8.2).

<sup>76</sup> Pdf page 12, para 47 (CD8.4).

<sup>77</sup> Pdf page 28, para 142 (CD8.1).

<sup>78</sup> Chris Smith, Proof, para 2.10.

<sup>79</sup> Sean Bashforth, EiC (Day 11).

<sup>80</sup> CD4.3.1, pages 42 – 45, paras 73 – 88.

<sup>81</sup> CD4.3.1, page 43, para 78.

<sup>82</sup> CD4.3.1, page 45, para 87.

<sup>83</sup> CD4.3.1, page 44, para 80.

<sup>84</sup> CD4.3.1, page 45, para 87.

The OR made no reference to the viability of the Airport, or of individual airlines. It was plainly right not to do so; it is no part of Government policy that airports can only expand if such expansion is necessary to prevent their business, or that of airlines, becoming unviable. Indeed, Government policy supports the creation of a competitive aviation industry and the delivery of consumer benefits, which relies upon the aviation industry being economically strong.<sup>85</sup>

45. Fourth, with regards to the argument that there is no demonstrable ‘need’ from local people to fly on Saturday afternoons that could not be met during the week, this fundamentally misunderstands the nature of the Airport’s demand forecasts. As explained by Ms Congdon, the demand forecasts are based on the national forecast growth in aviation demand, of which the Airport will meet a proportion. The forecasts demonstrate a demand for leisure travel throughout the week, including at weekends. The starting point in the context of MBU is that this demand should be met. In order to meet the demand for leisure travel, conditions must be created at the Airport where the airlines can viably operate such services. This includes permitting operations at times that the demand for business travel is less, as well as reducing the current inefficiency in aircraft utilisation.
46. The question is not, therefore, whether an individual passenger, who might prefer to fly on a Saturday afternoon, could instead travel on a weekday. Such an approach would be to deny consumers choice of where and when they want to fly from. This is directly contrary to Government policy in Fttf, which makes clear that “*Consumers are at the heart of UK aviation, and ensuring that the sector continues to deliver effectively for all consumers will be essential for its future success.*”<sup>86</sup>
47. It is notable that LBN’s case that there is no evidence of demand for Saturday afternoon flying is inconsistent with its position in respect of Saturday afternoon noise effects, which is predicated on an assumption that there will be flights during this period.<sup>87</sup> There is no obvious reason why airlines would put on flights during a period where there is no demand.<sup>88</sup> In such circumstances, the noise effects about which LBN are concerned would simply not arise.
48. In short, meeting the clear demand to fly from the Airport, in accordance with MBU, is ‘need’ for the purposes of this appeal.

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<sup>85</sup> Fttf, pdf page 7 (CD3.5.6).

<sup>86</sup> Pdf page 62 (CD3.5.6).

<sup>87</sup> This was explained by Sean Bashforth in EiC (Day 11).

<sup>88</sup> Sean Bashforth, EiC (Day 11).

### Scope of the dispute at the close of evidence

49. By the close of the evidence, the scope of the dispute in respect of forecasting is extremely narrow. The following significant points are now agreed:
- a. There is no dispute that the methodology used for the forecasts is the most appropriate available.<sup>89</sup>
  - b. It is no party's case that the Airport will not reach 9 mppa.<sup>90</sup>
  - c. There are no alternative forecasts demonstrating when this level of demand would occur, if not in accordance with York Aviation's forecasts.<sup>91</sup>
  - d. There is no dispute that it is appropriate for the environmental impact assessment to assess the environmental effects of the Airport with a 9 mppa throughput, as that is the passenger capacity limit that this planning permission has applied for.<sup>92</sup> Nor is there any dispute that this is the approach that the Airport has taken in its Environmental Statement.<sup>93</sup>
  - e. There is no dispute as to the fleet mix at 9 mppa, which is an output of the air traffic forecasts. Importantly, there is no dispute as to the rate of re-fleeting that has been assumed as a result of the additional slots.<sup>94</sup>
  - f. There is no dispute that the rate of re-fleeting to new generation aircraft will inevitably constrain the rate of take-up of the additional slots.<sup>95</sup> As such, the rate of take-up, and therefore any new noise effects on Saturday afternoons, will be gradual.<sup>96</sup> And;
  - g. There is no dispute that it is no part of Government policy to direct airport capacity to

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<sup>89</sup> Chris Smith, XX (Day 5) and SOCG (CD11.2), Table 8.1.

<sup>90</sup> Dr Smith, XX (Day 5): Dr Smith clarified his position as follows: *"I have never said that London City would not reach 9 mppa, I am saying I can't say that it will. This is different from saying that it will not."*

<sup>91</sup> Dr Smith, XX (Day 5).

<sup>92</sup> Dr Smith, XX (Day 5).

<sup>93</sup> Dr Smith, XX (Day 5)

<sup>94</sup> Dr Smith, XX (Day 5): Dr Smith confirmed in respect of Table 4.2 in Ms Congdon's Proof (page 29), that whilst he had not given the rate of re-fleeting any particular consideration, he did not consider the rates in Table 4.2 to be unreasonable.

<sup>95</sup> Dr Smith, XX (Day 5): Dr Smith explained that he anticipated that there would be operations on a Saturday afternoon shortly after the grant of planning permission, but that the number of flights would build up over time, as airlines place orders for new aircraft and wait for them to be delivered.

<sup>96</sup> Dr Smith, XX (Day 5).



one area, or away from another, in order to prevent or distort competition.<sup>97</sup>

50. In light of the considerable scope of agreement, the outstanding matters in dispute are relatively minor in nature. The issues primarily centre around the extent to which the forecasts are optimistic, such that growth may materialise more slowly than anticipated, and the extent to which business travel may not grow as forecast. These issues are discussed in detail below.

### **Policy context**

51. Current Government policy on aviation is contained in the following documents: Aviation Policy Framework ('APF') (March 2013), Beyond the Horizon - The Future of UK Aviation: Making Best Use of Existing Runways ('MBU') (June 2018), the Airports National Policy Statement: New Runway Capacity and Infrastructure at Airports in the South East of England ('ANPS') (June 2018) and, most recently published, Flightpath to the Future ('Fttf') (May 2022).
52. The Government has long recognised the role of aviation in economic growth. The APF, which was published in March 2013, states as follows:

*"The Government's primary objective is to achieve long-term economic growth. The aviation sector is a major contributor to the economy and we support its growth within a framework which maintains a balance between the benefits of aviation and its costs, particularly its contribution to climate change and noise."*<sup>98</sup>

53. It highlights the role of air travel in maintaining international connectivity, stating that:

*"One of our main objectives is to ensure that the UK's air links continue to make it one of the best connected countries in the world."*<sup>99</sup>

54. In recognition of the "important role"<sup>100</sup> played by aviation infrastructure in contributing towards economic growth through delivering connectivity, the APF identifies that a "key priority" is "to work with the aviation industry and other stakeholders to make better use of existing runway capacity at all UK airports"<sup>101</sup>.

55. It was in light of the economic benefits of aviation that the Government endorsed the principle

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<sup>97</sup> Dr Smith, XX (Day 5).

<sup>98</sup> Pdf page 9, para 5 (CD3.5.1).

<sup>99</sup> Pdf page 9, para 9 (CD3.5.1).

<sup>100</sup> Pdf page 16, para 1.2 (CD3.5.1).

<sup>101</sup> Pdf page 10, para 10 (CD3.5.1).

of airports ‘making best use’ of their existing runways. The Airports National Policy Statement (‘ANPS’), which was published in June 2018, made clear that the Government was “*supportive of airports beyond Heathrow making best use of their existing runways.*”<sup>102</sup> MBU, which was published at the same time as the ANPS, is clear in confirming the Government’s in principle support for airports beyond Heathrow making best use of their existing runways, taking into account relevant economic and environmental considerations.<sup>103</sup>

56. Between 2017 and 2019, the Government carried out consultation on its future aviation policy. This included the publication of a Green Paper titled ‘Aviation Strategy 2050: The Future of UK Aviation’ (‘Aviation 2050’)<sup>104</sup>. Aviation 2050 reiterated the Government’s position that “[a]viation is important for the government’s goal of building a global and connected Britain”.<sup>105</sup> It made clear that the reasons for the Government’s support for aviation growth are the many benefits of air travel, including facilitating individuals to maintain social and family ties and go on holiday, as well as bringing trade and investment to the UK. It made clear that aviation is “*vital to how the UK is connected to the global economy*”.<sup>106</sup> Aviation 2050 recognised the important role of airports at a local level, as “*vital hubs for local economies, providing connectivity, employment and a hub for local transport schemes*”.<sup>107</sup>
57. The most recent statement of Government aviation policy is ‘Flightpath to the future’ (‘FttF’), which was published in May 2022 and provides the “*strategic framework for aviation over the next ten years*”.<sup>108</sup> Fttf recognises the difficulties faced by UK aviation since the COVID-19 pandemic, and identifies the objective of securing the following:<sup>109</sup>
- “A future where aviation remains of huge strategic importance to the country post-Brexit, allowing tourism, business and trade to thrive. A future where UK aviation becomes synonymous with sustainability, and part of the solution to climate change. And a future where the UK consolidates its position as one of the world’s most important aviation hubs.”*
58. Fttf emphasises the Government’s intention to “*promote and improve [the UK’s] global connectivity to facilitate sustainable growth*” in order to deliver the Government’s ambitions

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<sup>102</sup> Pdf page 11, para 1.39 (CD3.5.2).

<sup>103</sup> Pdf page 10, para 1.29 (CD3.5.3).

<sup>104</sup> (CD3.5.4).

<sup>105</sup> Pdf page 15 (CD3.5.4).

<sup>106</sup> Pdf page 22, para 1.7 (CD3.5.4).

<sup>107</sup> Pdf page 16 (CD3.5.4).

<sup>108</sup> Pdf page 4 (CD3.5.6).

<sup>109</sup> Pdf page 5 (CD3.5.6).

of incentivising trade and investment opportunities.<sup>110</sup> Fttf re-confirms the Government's in principle support for airport expansion, as follows:<sup>111</sup>

*"Airport expansion has a key role to play in realising benefits for the UK through boosting our global connectivity and levelling up. We continue to be supportive of airport growth where it is justified, and our existing policy frameworks for airport planning provide a robust and balanced framework for airports to grow sustainably within our strict environmental criteria. They continue to have full effect, as a material consideration in decision-taking on applications for planning permission. The Government is clear that the expansion of any airport must meet its climate change obligations to be able to proceed."*

59. It is important to note that the support for aviation growth is not just expressed in terms of inbound tourism but is also based upon support for *"making the rest of the world more accessible for people living in the UK"*, recognising the importance of *"human connection"* and the role that global connectivity plays in facilitating this.<sup>112</sup> In this way, the needs of consumers are placed *"at the heart"* of UK aviation.<sup>113</sup> Fttf also reiterates the *"crucial role"* that aviation plays in local communities, through providing jobs, supporting economic activity, and through the wider positive impacts on the economy.<sup>114</sup> This directly supports the Government's 'levelling up' agenda.<sup>115</sup>
60. All this is hardly surprising in a context where the UK only has one land-link with the rest of the world (i.e. the Channel Tunnel). Aviation (and indeed shipping) are absolutely vital for the nation's connectivity and, indeed, its place in the wider world.
61. What is also of importance when considering the Proposed Amendments are the matters that are not part of national policy:
- a. There is no policy that airports should not be allowed to compete to provide air traffic services, or that demand should be distributed to certain airports and not others;<sup>116</sup>

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<sup>110</sup> Pdf page 20 (CD3.5.6).

<sup>111</sup> Pdf page 9 (CD3.5.6).

<sup>112</sup> Pdf page 21 (CD3.5.6).

<sup>113</sup> Pdf page 62 (CD3.5.6).

<sup>114</sup> Pdf page 44 (CD3.5.6).

<sup>115</sup> Pdf page 9 (CD3.5.6).

<sup>116</sup> This is, of course, subject to the exception that Government policy in the ANPS specifies its preference for a new runway in the South East to be delivered at Heathrow. The third runway at Heathrow policy in the ANPS is not directly applicable to this appeal.

- b. In particular, there is no policy that growth should be limited at certain airports in order to decrease carbon emissions;<sup>117</sup> and
  - c. There is no policy that outbound tourism should be limited so as to retain spending within the UK.
62. As such, there is no in principle policy that demand should not be met, and that it should not be met where it arises. In this regard, national aviation policy is aligned with national economic policy.

### **Wider context**

#### Drivers of air traffic demand

63. Air traffic forecasting is concerned with the assessment of future demand for air travel, including travel for both leisure and business purposes. The fundamental drivers of demand are population growth, economic growth, disposable income and the cost of travel, amongst other factors. The long-term relationship between these factors is well established.

#### Particular context at London City Airport

64. Historically, the Airport has served a high proportion of business passengers. Prior to the COVID-19 pandemic, 46% of passenger demand was for business travel.<sup>118</sup> Across the UK, business travel has recovered more slowly than leisure travel.<sup>119</sup> The demand for leisure travel is growing at a faster rate than business travel, but the operating restrictions currently in place at the Airport mean that it has been unable to serve the leisure market to the same extent as other airports.
65. The Airport is situated within an area that has experienced, and will continue to experience, rapid growth in population.<sup>120</sup> The OAPF identifies the Opportunity Area within which the Airport sits as capable of accommodating some 30,000 new homes and 41,500 new jobs across the plan period.<sup>121</sup> This area will therefore experience faster than average population

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<sup>117</sup> As suggested by both LBN and HACAN East.

<sup>118</sup> Louise Congdon, Proof, para 4.2.3.

<sup>119</sup> Louise Congdon, Proof, para 4.2.5: CAA data showed that in the first six months of 2023, leisure passenger numbers across the London airports had recovered to 99% of 2019 levels, whereas business passenger recovery on the same basis was 72%.

<sup>120</sup> Pdf page 179, Table 4.1 (CD3.3.1).

<sup>121</sup> OAPF, page 11 (CD3.10.1).

growth, generating demand for leisure travel within the Airport's catchment area.<sup>122</sup> This is reflected in a slight uplift applied to the growth rates for core districts in the east of London within York Aviation's forecasting methodology.<sup>123</sup> National aviation policy is clear in providing in principle support for meeting the needs of consumers.

## **London City Airport's Air Traffic Forecasts**

### Forecasting Methodology

66. The forecasts have been prepared using a semi-bottom-up approach, based on a projection of the underlying demand for air travel within the Airport's catchment area, taking into account expected economic growth and future changes in the cost of air travel, such as carbon costs.<sup>124</sup> As noted above, it is agreed with LBN that this is the most appropriate methodology available.<sup>125</sup> As explained by Ms Congdon, the approach to forecasting has two stages; the first is to forecast growth of the market as a whole and the second is to determine how the growth rate for the market as a whole applies to a particular airport.<sup>126</sup>
67. With regards to the first stage, York Aviation has used an econometric model based on the Monte Carlo approach, which provides a structural way of modelling uncertainty.<sup>127</sup> This approach randomly combines different permutations of economic and cost variables, which produces a fan graph of potential outcomes.<sup>128</sup> The carbon values used within the model are consistent with those used for the Jet Zero forecast modelling, which trend from the current UK ETS (or CORSIA) prices to the values in the most recent appraisal guidance produced by the Department for Business, Energy and Industrial Strategy ('BEIS').<sup>129</sup> The DfT growth elasticities have been used for each market segment to derive the growth rates.<sup>130</sup> As explained by Ms Congdon, these elasticities reflect the long-term relationship between economic growth and passenger demand and have been calibrated over a long time frame, which includes periods of recession. For the core case, the 50<sup>th</sup> percentile growth rate

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<sup>122</sup> Ms Congdon explained that in the development case the 'proportion' of business passengers rises faster than for leisure passengers because of the number of new routes that are available to them. It needs to be recognised, however, that the overall number of leisure passengers in the 9 mppa development case is still substantially higher than the number of leisure passengers in the 6.5 mppa 'do minimum' case, reflecting the Airport's ability to better serve its growing leisure market.

<sup>123</sup> Louise Congdon, Proof, para 4.3.6.

<sup>124</sup> Louise Congdon, Proof, para 4.3.1.

<sup>125</sup> Dr Smith, XX (Day 5) and SOCG (CD11.2), Table 8.1.

<sup>126</sup> Louise Congdon, EiC (Day 6).

<sup>127</sup> Louise Congdon, EiC, (Day 6).

<sup>128</sup> Need Case, pdf page 122, Figure D.1 (CD1.60).

<sup>129</sup> CD3.5.16.

<sup>130</sup> Louise Congdon, Proof, para 4.3.4. Need Case, pdf page 119, Table D2 (CD1.60).

produced by the model has been used.<sup>131</sup> The growth rates used for each market segment are set out in the Need Case.<sup>132</sup>

68. The second stage is to assess the Airport's share of the market, having regard to the characteristics of the Airport, its ability to capture a share of the market based on past performance and informed by changes such as improvements in surface access and growth in local population, taking into account competition and available capacity at other airports.

#### Managing uncertainty

69. As with any forecasts, there remains a degree of uncertainty surrounding the model output. This is inherent in the exercise of forecasting. However, the approach adopted by York is specifically designed to minimise and address uncertainty in two key respects:
70. First, the Monte Carlo approach provides a structural means of addressing uncertainty,<sup>133</sup> as it takes account of a whole combination of possible variables that could influence growth, including those which could result in slower growth.
71. Second, York has produced faster and slower growth cases, in addition to the core case. The slower growth case reflects slower recovery in the market, slower economic growth and higher cost factors. It is based on the 20<sup>th</sup> percentile growth rate from the fan graph produced by the Monte Carlo approach, as opposed to the 50<sup>th</sup> percentile used for the Core Case.<sup>134</sup> The slower growth case therefore takes account of the very factors which Dr Smith says represent 'downside risks' that ought to be taken into account.<sup>135</sup> Indeed, as accepted by Dr Smith, the slower growth scenario inherently has less downside risk than the core case.<sup>136</sup> As explained below, Dr Smith confirmed that he has not considered the slower growth scenario.<sup>137</sup>
72. It is also important to put any such uncertainty in context: there is no uncertainty as to the maximum throughput of the Airport if the application is granted. It seeks an increased passenger cap of 9 mppa. Nor is there any dispute that this is the level of throughput that is appropriate to assess through the Environmental Statement.<sup>138</sup> Moreover, as demonstrated by the assessment of the slower growth scenario, if the Airport were to reach 9 mppa in 2033

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<sup>131</sup> Need Case, pdf page 122, para 19 (CD1.60).

<sup>132</sup> Need Case, pdf page 123, Table D.6 (CD1.60).

<sup>133</sup> Louise Congdon, EiC (Day 6).

<sup>134</sup> Louise Congdon, EiC (Day 6).

<sup>135</sup> Louise Congdon, EiC (Day 6).

<sup>136</sup> Chris Smith, XX (Day 5).

<sup>137</sup> Chris Smith, XX (Day 5).

<sup>138</sup> Chris Smith, XX (Day 5).

rather than 2031 (as forecast in the core case), this would not have a material impact on the environmental effects; it would still be an airport operating at 9 mppa, albeit reached slightly later.

#### Forecast scenarios

73. The core development case forecast indicates that the Airport will reach 9 mppa and 111,000 ATMs in 2031.<sup>139</sup> This reflects a lower growth rate than seen at the Airport between 2014 and 2019 and between 2009 and 2019.<sup>140</sup>
74. In order to reflect the uncertainties inherent in projecting future demand, two sensitivity cases have been prepared to reflect a reasonable range of time over which the Airport would reach 9 mppa if the Proposed Amendments are granted planning permission.<sup>141</sup> The 'faster growth' case indicates that the Airport could reach 9 mppa in 2029. The 'slower growth' case, which reflects slower economic growth and the possibility of higher carbon costs, projects the Airport to reach 9 mppa in 2033.<sup>142</sup> They demonstrate that there is no 'cliff edge' in environmental effects; in other words, those effects are not materially different if any uncertainty in growth means it is faster or slower than the core development case.

#### Nature of air traffic forecasts

75. It is important to understand that the air traffic forecasts produced by York are long-term in nature. As explained by Ms Congdon, the forecast reflects a long-term trend that will not be reflective of how demand will actually grow year on year. It is inevitable that there will be variability in the rate of growth, such that growth will not represent a straight line but will be 'lumpy'. This is more exaggerated at a small airport than a larger one. For example, there may be events that result in a step change in demand, such as the introduction of new based aircraft. If one were to plot the rate of growth over this period, the growth would appear to be slower before the step change and faster after it, rather than a consistent rate as indicated by the forecasts.
76. The consequence of this is that one cannot take a single year from within the forecast period and 'spot predict' the demand at that year. It is for this reason that the fact that growth has not materialised in accordance with the forecast as at 2023 says nothing about the accuracy

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<sup>139</sup> Louise Congdon, Proof, para 4.3.12.

<sup>140</sup> Louise Congdon, Proof, para 4.3.12.

<sup>141</sup> Louise Congdon, Proof, para 4.4.1.

<sup>142</sup> Louise Congdon, Proof, para 4.4.2.

of the forecast as at 2031. It is simply wrong to suggest therefore that one is ‘starting from the wrong point’ if slower growth is experienced in the early forecast years.<sup>143</sup>

#### ‘Split’ decision

77. Without the uplift in the passenger cap and the change to opening hours sought by the Proposed Amendments, growth would be materially slower as the Airport would not be able to meet the increasing local requirement for outbound leisure travel as well as its traditional business travel market. Overall, the Need Case explains that the effect of the current constraint in ‘operating hours’ would mean that the Airport would not be expected to reach its consented 6.5 mppa level until 2029 with slower growth thereafter, even if the 9 mppa passenger cap was increased.<sup>144</sup> As explained by Ms Congdon, she now considers that growth to 8.8 mppa would be even slower than was anticipated in the Need Case.<sup>145</sup>
78. During the inquiry, the Inspector raised the point about a ‘split decision’, i.e. whether there could be a grant of planning permission amending the other conditions but retaining the existing limits on weekend operations in (now) condition 17. Clearly, section 73 does allow some conditions to be amended and not others, that is not in dispute; the issue is whether by ‘splitting’ the decision, the different benefits and environmental impacts of the development would have been properly assessed. The Airport’s position, as expressed during the inquiry, is that the extension of the hours on Saturday afternoon is fundamental to meeting the need, driving the socio-economic benefits of the Proposed Amendments and also, through its agreed acceleration of re-fleeting, the overall noise benefits. As the effects, both positive and negative, of granting section 73 permission without amending condition 17 to extend the operating hours on Saturday has not been assessed, the Airport is concerned that any such decision may be susceptible to legal challenge.

#### **Relationship with re-fleeting**

79. The Proposed Amendments are specifically designed to create the conditions in which there is an incentive for airlines to re-fleet at a faster rate than they otherwise would have. Central to this is proposed condition 89, which will limit the additional three early morning slots and the Saturday afternoon slots to ‘new generation’ aircraft only. ‘New generation’ aircraft comprise aircraft such as the Embraer-E2 family or Airbus A220 series aircraft, which have

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<sup>143</sup> This argument was advanced by Dr Chapman, despite not being a forecaster. Alex Chapman, XX (Day 6): *“the launch year of the forecast is vitally important”*.

<sup>144</sup> In the ‘do minimum’ case. This is explained in detail in the Need Case (CD1.60).

<sup>145</sup> Louise Congdon, EIC (Day 6).



greater seating capacity and are cleaner, quieter and more fuel efficient than much of the existing fleet at the Airport. The noise characteristics of such 'new generation' aircraft are defined in condition 89.

80. There is no dispute that the Proposed Amendments will have a positive effect on the rate of re-fleeting.<sup>146</sup> Not only will airlines have to re-fleet in order to take advantage of the additional slots, but they will also be able to use those aircraft more efficiently than at present, creating an additional economic incentive to re-fleet. The letter from the CEO of BA CityFlyer is an important endorsement of Ms Congdon's evidence on this particular issue.<sup>147</sup> Once purchased, the new generation aircraft will be used throughout the week, thereby delivering a benefit in terms of noise on other days of the week; that last point is important.

#### **Outstanding issues in dispute**

81. As noted above, there are significant areas of agreement in respect of air traffic forecasting.
82. Three outstanding points of dispute with LBN were outlined in the Airport's opening submissions.<sup>148</sup> These were as follows:
- a. The extent to which 'downside risks' mean that the Airport's forecasts are 'optimistic';
  - b. The ability for the forecast growth to be handled at other airports; and
  - c. The extent to which there would be factors other than the Proposed Amendments that would influence the rate of re-fleeting by airlines.
83. In light of the extent of agreement set out above, the significance of these points for the determination of the appeal is greatly diminished. In particular, Dr Smith has made clear that whatever his concerns about downside risks, it is no part of his evidence that the Airport will not reach 9 mppa. Nor is there now any dispute that it is appropriate to assess the Airport at 9 mppa for the purposes of the Environmental Statement. York Aviation's forecast rate of re-fleeting is also now agreed to be reasonable.<sup>149</sup> As such, to a large degree, little turns on the outstanding points of dispute between the Airport and LBN. Notwithstanding this, however, these points are addressed below.
84. Notwithstanding that HACAN East has not provided expert forecasting evidence, Dr Chapman

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<sup>146</sup> Chris Smith, Proof, para 5.19.

<sup>147</sup> See Louise Congdon, Proof, Apx 1.

<sup>148</sup> INQ-03, para 45.

<sup>149</sup> Chris Smith, XX (Day 5).

argues that there is uncertainty regarding the rate at which business travel will grow. This is based upon the use of the DfT elasticity, which he asserts was based on a “*different era of Britain’s economic development*”.<sup>150</sup>

85. These issues are dealt with in turn.

### **Summary of the Airport’s case on outstanding issues in dispute**

#### Downside risks

86. The Airport’s air traffic forecasts were presented in the Need Case submitted with the section 73 application in December 2022. Dr Smith was instructed by LBN to review the Need Case, which led to the production of a review of the Need Case initially published in April 2023 and subsequently updated in June 2023.<sup>151</sup> At that stage, Dr Smith’s assessment was that the Airport would reach 9 mppa but it would do so later than 2031.<sup>152</sup> The report identified that the reason for this was that the DfT’s March 2022 forecasts were optimistic as the GDP assumptions pre-date the Russian invasion of Ukraine.<sup>153</sup> At that stage, Dr Smith recognised that growth at the Airport had stalled,<sup>154</sup> but did not consider it to be material to the forecasts at 2031.<sup>155</sup> The OR summarised Dr Smith’s analysis, concluding that whilst there was some dispute as to how fast the Airport would grow, it was agreed that growth was expected.<sup>156</sup>
87. By September 2023, Dr Smith no longer considered that he could agree that the Airport would reach 9 mppa,<sup>157</sup> albeit Dr Smith has made clear that his position is not that 9 mppa will not be reached. This is based solely upon the short-term performance of the Airport.<sup>158</sup> Dr Smith’s Proof identifies a range of factors that he now argues mean that the Airport may not reach 9 mppa. Before turning to consider these particular factors, it is necessary to note the following points.
88. First, Dr Smith has provided no coherent explanation as to why the short-term performance of the Airport was not considered material to the forecasts to 2031 at the time of his June

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<sup>150</sup> Alex Chapman, Proof, para 4.6.2.

<sup>151</sup> **CD4.5.9a** and **4.5.9b**.

<sup>152</sup> Louise Congdon, Proof, para 7.3.6. As explained below, Dr Smith confirmed that he has not reviewed the slower growth scenario (Chris Smith, XX (Day 5).

<sup>153</sup> Para 2.8 (**CD4.5.9b**).

<sup>154</sup> Table 3.1 (**CD4.5.9b**).

<sup>155</sup> Agreed: Dr Smith, XX (Day 5).

<sup>156</sup> Para 87 (**CD4.3.1**).

<sup>157</sup> Dr Smith, XX (Day 5).

<sup>158</sup> SOCG, pdf page 44, para 17.1(b) (**CD11.2**).

2023 report, but were relevant some four months later. Dr Smith was clearly aware of the rate of recovery at the Airport prior to advising LBN in June 2023, yet that did not prevent him advising LBN that 9 mppa would be reached. In any event, Dr Smith made clear in cross-examination that he agreed with Ms Congdon's position that it was "*not appropriate to base long-term forecasts on very short term trends*".<sup>159</sup>

89. Second, the very purpose of producing a slower growth scenario is to identify what the effect would be if more downside risks were to materialise, leading to slower growth.<sup>160</sup> Dr Smith confirmed that he had not considered or reviewed the slower growth scenario and was therefore unable to offer a view on whether or not it remained optimistic.<sup>161</sup>
90. Third, Dr Smith has not produced any alternative forecasts that could be taken into account for the purposes of determining the appeal. Indeed, it is common ground that it is appropriate for the purposes of the Environmental Statement to assess the Airport at a throughput of 9 mppa.<sup>162</sup> In this regard, the 'downside risks' identified by Dr Smith have no consequential impact on the appropriateness of the Environmental Statement or the Secretary of State's ability to rely upon it.
91. Turning to the particular 'downside risks' identified by Dr Smith, these include the rise in video-conferencing, the extent of working from home, the impact of Brexit and shortage of aircraft affecting BA City Flyer.<sup>163</sup> With the exception of the last of these, none of the factors identified are specific to the Airport. Dr Smith accepted in cross-examination that there was no specific evidence to support these factors, but argued that they were based on "*common sense*" and "*reading the newspaper*".<sup>164</sup> In light of Dr Smith's concession that such factors are not an appropriate basis on which to produce long-term forecasts, these points simply do not go anywhere.
92. In contrast, Ms Congdon's evidence provides a detailed explanation of the following specific reasons for the slower rate of recovery at the Airport:<sup>165</sup>
- a. The recovery of business travel, which previously made up a significant proportion of the passenger demand at the Airport, has been slower to recover than that of leisure

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<sup>159</sup> Chris Smith, XX (Day 5). Dr Smith responded: "*we are agreed on this*".

<sup>160</sup> As accepted by Dr Smith in XX (Day 5).

<sup>161</sup> Chris Smith, XX (Day 5).

<sup>162</sup> Chris Smith, XX (Day 5): Dr Smith accepted this.

<sup>163</sup> Chris Smith, Proof, para 2.3.

<sup>164</sup> Chris Smith, XX (Day 5).

<sup>165</sup> Louise Congdon, Proof, para 4.2.3.

travel. In particular, as explained by Ms Congdon, there are certain key business travel routes that have not yet been restarted following the pandemic.<sup>166</sup> This is a temporary situation that relates to issues with delivery and serviceability of certain aircraft engines (as explained further below).<sup>167</sup> On routes that have been reinstated, however, the recovery shows that demand to use the Airport remains strong<sup>168</sup> and in some instances, passenger levels have now exceeded those of 2019.<sup>169</sup>

- b. Whilst the leisure market has recovered faster than business travel at the UK level, the existing restrictions on operations at the Airport mean that it has been unable to serve the leisure market to the same extent as other airports.<sup>170</sup> The Proposed Amendments, and in particular the longer operating hours on Saturday afternoons, would make a significant contribution to addressing this issue.<sup>171</sup>
- c. Between 2013 and 2019, rapid growth at the Airport was driven in part by the fact that Heathrow was approaching its annual runway movement limit.<sup>172</sup> There is no dispute that during the pandemic airlines consolidated flights at Heathrow in order to protect their extremely valuable slots at that airport, which resulted in a displacement of routes away from airports such as London City.<sup>173</sup> The rate at which Heathrow is recovering means that long haul flights will soon start replacing short haul routes, displacing these routes back to other airports such as London City.<sup>174</sup> Dr Smith agreed that there was no reason to believe that the displacement of flights to Heathrow would be permanent;<sup>175</sup>
- d. Finally, as acknowledged by Dr Smith,<sup>176</sup> there has been particular issues with delivery and serviceability relating to engines that power Embraer-E2 and A220 aircraft. These are key aircraft that are able to operate at the Airport. This has led to some airlines decreasing the frequency of particular services or temporarily ceasing some routes

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<sup>166</sup> Louise Congdon, Proof, para 4.2.9.

<sup>167</sup> Louise Congdon, Proof, para 4.2.17.

<sup>168</sup> Louise Congdon, Proof, para 4.2.7.

<sup>169</sup> Louise Congdon, Proof, pdf page 26, Figure 4.1.

<sup>170</sup> Louise Congdon, Proof, para 4.2.12.

<sup>171</sup> Louise Congdon, Proof, para 4.2.13.

<sup>172</sup> Louise Congdon, Proof, pdf page 28, Figure 4.2.

<sup>173</sup> Accepted by Chris Smith, XX (Day 5).

<sup>174</sup> This is accepted by Chris Smith, XX (Day 5).

<sup>175</sup> Chris Smith, XX (Day 5).

<sup>176</sup> Chris Smith, XX (Day 5): *"I acknowledge that there will be some issues like this"*.

altogether.<sup>177</sup>

93. These reasons explain why recovery at the Airport has been slower than at other UK airports. They do not, however, undermine the long-term forecasts which look to 2031 in the core case or 2033 on the slower scenario.<sup>178</sup>
94. In addition to highlighting the short-term performance of the Airport, Dr Smith seeks to criticise a number of the macro-economic inputs used in the modelling.<sup>179</sup> These include a range of costs including fuel costs, carbon costs, air passenger duty and other airline costs.<sup>180</sup> Dr Smith made clear that whilst these inputs were “*perfectly proper*” at the time that the forecasts were prepared, he now considered that the passage of time had proved these inputs to be too optimistic.<sup>181</sup>
95. As explained by Ms Congdon, the anticipated higher cost of sustainable aviation fuels (‘SAFs’) has been taken into account in the forecasts by the use of carbon costs from the Jet Zero Strategy, which have been set at a level considered to be high enough to incentivise the use of SAFs or zero emissions aircraft in line with the Jet Zero assumptions for take-up.<sup>182</sup> With regards to carbon costs, Dr Smith confirmed that York had used the correct carbon costs in the modelling,<sup>183</sup> but that he considered that lower CORSIA costs at other airports may lead to slower growth in long haul services, resulting in a fall in demand at London City.<sup>184</sup> With regards to air passenger duty, Dr Smith argued that a new administration would be likely to increase air passenger duty, thereby affecting demand for air travel.<sup>185</sup>
96. Once again, however, Dr Smith accepted that he had no evidence to support any of the factors he relied upon to criticise the modelling inputs.<sup>186</sup> As Ms Congdon explained, there is a risk associated with overreacting to every economic downturn.<sup>187</sup> Due to the long-term nature of the forecasts, it is not appropriate to adjust them for every global event. There is nothing in the underlying economic projections that indicated that an adjustment was required for the

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<sup>177</sup> Louise Congdon, Proof, para 4.2.17

<sup>178</sup> Louise Congdon, Proof, para 4.5.1.

<sup>179</sup> Chris Smith, Proof, paras 4.9 – 4.35.

<sup>180</sup> Louise Congdon, Proof, para 4.11 – 4.27.

<sup>181</sup> Chris Smith, XX (Day 5).

<sup>182</sup> Louise Congdon, Proof, para 7.3.3.

<sup>183</sup> Chris Smith, XX (Day 5).

<sup>184</sup> Chris Smith, Proof, para 4.19.

<sup>185</sup> Chris Smith, Proof, para 4.22.

<sup>186</sup> Chris Smith, XX (Day 5). Dr Smith explained that he was working within an “*evidence vacuum*”.

<sup>187</sup> Louise Congdon, EIC (Day 6).

2031 or 2033 forecasts.<sup>188</sup>

#### Accommodating growth at other airports

97. In his Proof of Evidence, Dr Smith argued that the increase in demand of 2.5 mppa could be accommodated at other London airports.<sup>189</sup> Mr McFadden confirmed that it was because of this factor that LBN gave reduced weight to the demand for growth in the determination of the application.<sup>190</sup> He accepted that that factor had also reduced the weight he had given to need in his own planning balance for the inquiry.<sup>191</sup>
98. However, as accepted by Dr Smith, there is no policy to restrict growth at an airport if another airport has capacity to meet the demand.<sup>192</sup> Moreover, as accepted by Mr McFadden, it is well-established in national aviation policy and in previous appeal decisions that where there is demand for air travel, that amounts to ‘need’ for these purposes.<sup>193</sup> As outlined above, there is no requirement to demonstrate a specific ‘need’ and still less, any requirement to demonstrate that the airlines or Airport would be ‘unviable’ in the absence of the expansion.
99. There is therefore no dispute in substance that LBN’s approach is not reflective of, and finds no support in, Government policy.<sup>194</sup> There is therefore no policy basis on which to reduce the weight to be given to the need identified through the air traffic forecasts, as a result of capacity at other airports. Indeed, to do so is tantamount to reducing the weight to be given to up to date national aviation policy itself, without any good reason to do so.

#### Factors affecting re-fleeting

100. By the close of the evidence, there is no dispute that the Proposed Amendments will have a positive impact on the rate of re-fleeting and that the rate of re-fleeting forecast by York Aviation is reasonable.<sup>195</sup> Dr Smith’s argument that there are “*other factors*”<sup>196</sup> that would also drive re-fleeting is now largely academic, as there is no dispute that York’s forecasts can

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<sup>188</sup> Louise Congdon, EIC (Day 6).

<sup>189</sup> Chris Smith, Proof, para 2.10.

<sup>190</sup> Liam McFadden, XX (Day 10).

<sup>191</sup> Liam McFadden, XX (Day 10)

<sup>192</sup> Dr Smith, XX (Day 5).

<sup>193</sup> Liam McFadden, XX (Day 10).

<sup>194</sup> Chris Smith, XX (Day 5): In respect of whether there was a policy that would constrain capacity at one airport because it could be accommodated at another airport, Mr Smith stated that it was “*clear that one airport should not be restricted*”.

<sup>195</sup> Accepted by Dr Smith; Chris Smith, XX (Day 5). See also Chris Smith, Proof, para 2.13.

<sup>196</sup> Chris Smith, Proof, para 2.13.

be relied upon by the Secretaries of State in the determination of the appeal.

Business travel

101. York Aviation used air traffic elasticities specified in the DfT's UK Aviation Forecasts 2017 in the production of its forecasts. These elasticities encapsulate in broad terms the relationship between economic growth and price, and the propensity of to fly. They reflect a wide range of factors that may impact demand, such as the maturity of markets, attitudinal change, changes in personal and business habits and the rise of new technologies. Dr Chapman seeks to cast doubt on the appropriateness of the use of the business passenger elasticities, on the basis that much has happened since the production of these elasticities which has rendered them out of date.
102. There are four main points to make in respect of the use of the DfT elasticities:
- a. The elasticities have been recently re-calibrated by DfT and were published in 2022;<sup>197</sup>
  - b. They are based on long-term data from 1986 to 2017 for international markets and 1991 to 2018 for domestic markets,<sup>198</sup> they have been peer-reviewed, and they remain the most comprehensive piece of analysis available;
  - c. They provide the basis on which DfT itself produces forecasts upon which policy decisions are made; and
  - d. They are the only elasticities before the Inquiry. No other party has suggested any alternative elasticities which should be used for the purpose of forecasting.
103. York Aviation's use of the elasticities in these circumstances is entirely appropriate and reasonable.
104. Dr Chapman has sought to argue that there has been a "*structural change*" that is not reflected in the elasticities, making them inappropriate for use. However, as Ms Congdon explained, the period over which the elasticities are derived include periods of discontinuity including disruption to travel caused by 9/11 and the 2008 financial crisis. In other words, the elasticities already reflect periods of profound economic change and have been found by DfT to remain robust.

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<sup>197</sup> **CD3.5.13.**

<sup>198</sup> Department for Transport, Econometric Models to Estimate Demand Elasticities for the National Air Passenger Demand Model, para 2.17 (**CD3.7.47**).

## **Conclusions on forecasting**

105. The forecasting methodology used by York Aviation has been designed to address uncertainty and produces forecasts that are robust. The scope of disagreement largely centres around the likelihood that growth will be slower than anticipated. This very issue has been addressed by the production of a slower growth scenario; although not having reviewed this forecast, Dr Smith is unable to comment on it. Whilst criticisms of the inputs to the modelling and the use of DfT elasticities have been advanced, no party has proposed any alternatives. Dr Smith accepts that very many of his downside risks are not supported by any evidence whatsoever. Indeed, there is no dispute that it is appropriate to assess the characteristics of the Airport at 9 mppa for the purposes of the environmental statement, and that the rate of re-fleeting assumed is reasonable.
106. For the reasons explained above, the Airport's forecast of business passenger growth is robust and entirely appropriate. Once the methodology adopted by York Aviation is properly understood, many of the apparent points of 'dispute' fall away.

## **SOCIO-ECONOMIC BENEFITS**

### **Introduction**

107. The Airport is situated within an area of rapid population growth and its important role in the local economy is well-recognised by both LBN and the Greater London Authority. In 2019, the Airport employed 2,310 on site<sup>199</sup> and generated a further 850 jobs within the local area or 1,370 across London, through its supply chain and induced effects.<sup>200</sup>
108. The Proposed Amendments will allow the Airport to grow to serve 9 mppa, delivering important economic, social and environmental benefits that are aligned with the principles of sustainable development, national aviation policy and the UK's wider economic objectives.
109. Whilst the socio-economic benefits are not directly the subject of a reason for refusal, it is implicit in reason for refusal 1 that LBN does not consider that the socio-economic benefits of the development outweigh the noise effects of the Proposed Amendments, notwithstanding

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<sup>199</sup> 2,060 FTE. Sean Bashforth, Proof, para 5.13.

<sup>200</sup> Louise Congdon, Proof, Table 6.2, page 51.



the consensus over the scale of the benefits that will be delivered.<sup>201</sup>

### **Scope of dispute at close of evidence**

110. The scope of disagreement in respect of socio-economic benefits with LBN is narrow. LBN does not challenge the scale of the socio-economic benefits as assessed by York Aviation.<sup>202</sup> The only issues raised by LBN in its evidence relate to the past record of meeting local jobs targets and the timing of the realisation of benefits in relation to the environmental effects of the development. For the reasons explained later in this section, both of these issues are based on a misunderstanding of the evidence by LBN.
111. The points raised by HACAN East are slightly more wide ranging, but relate principally to three areas, namely, the need to carry out of WebTAG appraisal, the relevance of the ‘tourism deficit’ created by outbound travel, and the extent to which there will be displacement. HACAN East has also sought to argue that the business productivity benefits have been overstated, however this argument is merely a consequence of Dr Chapman’s arguments on forecasting business travel. For the reasons explained above, the DfT business travel elasticities used by York are appropriate.

### **Policy context**

#### National policy context

112. The Government’s position on the importance of aviation to the UK economy is clear.
113. The UK is heavily reliant on aviation as a means of international connectivity. One of the main objectives of Government, which was set out in the APF in 2013, is *“to ensure that the UK’s air links continue to make it one of the best-connected countries in the world.”*<sup>203</sup> This aim was reiterated in Aviation 2050<sup>204</sup> in December 2018, in which the Government recognised that:
- “Aviation has an important role to play in the future of our country. It is key to helping to build a global Britain that reaches out to the world. It underpins the competitiveness and global reach of our national and our regional economies.”*<sup>205</sup>
114. Aviation 2050 identifies aviation as an *“increasingly important facilitator of our modern lives”*

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<sup>201</sup> SOCG, para 8.1 (CD11.2).

<sup>202</sup> Chris Smith, XX (Day 5).

<sup>203</sup> Para 9 (CD3.5.1).

<sup>204</sup> (CD3.5.4).

<sup>205</sup> Page 18 (CD3.5.4).

and “vital to how the UK is connected to the global economy”.<sup>206</sup>

115. In addition to providing international connectivity, the role of airports both as centres of employment and catalysts of economic growth is well-established and recognised in national policy. The APF provides strong support for sustainable air transport growth in recognition of the significant economic and social benefits that it brings:

*“Airports are in some ways cities in themselves, creating local jobs and fuelling opportunities for economic rebalancing in their wider region or area”.<sup>207</sup>*

116. This is echoed in Aviation 2050, which identifies airports as “vital hubs for local economies” and explains that:

*“The government has been clear about the importance of aviation to the whole of the UK. Aviation creates jobs across the UK, encourages our economy to grow and connects us with the rest of the world as a dynamic trading nation. It also helps maintain international, social and family ties. This is why the government supports the growth of aviation, provided that this is done in a sustainable way and balances growth with the need to address environmental impacts.”<sup>208</sup>*

117. More recently, in Fttf, the Government recognises aviation’s “huge strategic importance to the country”.<sup>209</sup> The Government recognises the role of airport expansion in “championing the levelling up agenda” through job creation and supporting associated supply chains.<sup>210</sup>

#### Local policy context

118. The Riverside and Beckton Opportunity Area, within which the Airport sits, is one of the largest in London. It has already experienced rapid growth and is identified to provide some 30,000 new homes and 41,500 new jobs over the next 20 years.<sup>211</sup> The Royal Docks and Beckton Riverside Opportunity Area Planning Framework (‘OAPF’) recognises the Airport’s role as an “anchor” economic asset of regional and international importance,<sup>212</sup> which “continue[s] to bring important economic benefits to the area”.<sup>213</sup> In this context, it supports the “continued

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<sup>206</sup> Paras 1.5 – 1.7 (CD3.5.4).

<sup>207</sup> Pdf page 20, para 1.20 (CD3.5.1).

<sup>208</sup> Page 18 (CD3.5.4).

<sup>209</sup> Page 3 (CD3.5.6).

<sup>210</sup> Page 7 (CD3.5.6).

<sup>211</sup> OAPF, page 11 (CD3.10.1).

<sup>212</sup> OAPF, page 113 (CD3.10.1).

<sup>213</sup> OAPF, page 23 (CD3.10.1).

success” of the Airport.<sup>214</sup>

119. The Airport is recognised as a “key local employer”<sup>215</sup> by both the Greater London Authority and LBN. Policy T8 of the London Plan is supportive of the role that aviation plays in the economy, recognising that:

*“London’s major airports provide essential connectivity for passengers and freight, support vital trade, inward investment and tourism, generate prosperity, and provide and support significant numbers of jobs”.*<sup>216</sup>

120. The Newham Local Plan similarly recognises the role of the Airport as a “catalyst for investment within the area”.<sup>217</sup> The spatial strategy in policy J1 is identified as “continued development and promotion of the Arc of Opportunity and employment hubs”, of which the Airport is identified as one.<sup>218</sup>

#### **Wider context**

121. The Airport is located within and in close proximity to areas of significant deprivation and unemployment. A large proportion of LBN falls within the top 30% most deprived areas in relation to income and employment.<sup>219</sup> The Airport itself lies within an area that is amongst the 20% most deprived in the UK and is close to significant areas within the 10% most deprived areas with very high levels of deprivation.<sup>220</sup>
122. Dr Chapman sought to suggest that whilst unemployment was an issue that was facing this area at the time of the 2011 census, more recent data demonstrated that this issue had become less acute.<sup>221</sup> As explained by Mr Bashforth, the Environmental Statement was produced before the 2021 census data had been published. However, the quality of the census data collected in 2021 has been subject to concerns, due to the continuing effects of the COVID-19 lockdown.<sup>222</sup> Mr Bashforth’s evidence demonstrates that on the basis of monthly unemployment, LBN has higher unemployment levels than the London average,

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<sup>214</sup> OAPF, page 112, section 3.3 (CD3.10.1).

<sup>215</sup> OAPF, section 1.1 (CD3.10.1).

<sup>216</sup> Para 10.8.2 (CD3.3.1).

<sup>217</sup> Newham Local Plan, para 1.23 (CD3.4.1).

<sup>218</sup> Pdf page 113 (CD3.4.1).

<sup>219</sup> Environmental Statement, Socio-economics, para 7.5.35 (CD1.14).

<sup>220</sup> Environmental Statement, Socio-economics, para 7.5.35 (CD1.14).

<sup>221</sup> Dr Chapman, EiC (Day 5): Dr Chapman gave evidence that the unemployment rate was “roughly half” the level identified through the 2011 census.

<sup>222</sup> Sean Bashforth, EiC (Day 11).

which is 5%.<sup>223</sup> Indeed, LBN’s emerging Local Plan, which was published in December 2022, identifies that *“Newham residents continue to experience unemployment or low paid and insecure jobs”*.<sup>224</sup> This reflects the objectives of policies J1 and J3 of the adopted Local Plan, which identify the Arc of Opportunity within which the Royal Docks sit as a focus for job creation and reducing barriers to work.<sup>225</sup> The Local Plan recognises that LBN is the 23rd most deprived borough in the whole of England and Wales, with multiple indicators demonstrating serious employment and skills challenges.<sup>226</sup>

123. The Airport also sits in the East London priority area for Levelling Up. Four local authorities in East London are in the highest priority category for levelling up, including LBN, and three in priority 2.<sup>227</sup> The high priority is driven primarily by unemployment and lack of jobs, with five of the seven East London authorities identified in the top 20 for the highest unemployment.<sup>228</sup>
124. This is important context within which the socio-economic benefits that would be delivered by the Proposed Amendments need to be considered.

### **The Airport’s assessment of socio-economic benefits**

#### Approach to assessment

125. There is no dispute with LBN in respect of the methodology used by York Aviation to assess the socio-economic benefits of the Proposed Amendments.<sup>229</sup> The only point raised by HACAN East relates to the way in which displacement has been taken into account. This issue is addressed in detail below.
126. The economic benefits have been assessed within a commonly used and well accepted framework for analysis, which is consistent with best practice.<sup>230</sup> This framework splits the economic impacts into a series of effects, which, in broad terms, can be classified as either relating to the operation of the Airport as an economic activity, or wider economic impacts that accrue to the users of air transport services from the connectivity offered by the

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<sup>223</sup> Sean Bashforth, Proof, paras 2.20 – 2.23.

<sup>224</sup> Pdf page 161, para 3.129 (**CD3.11.1**).

<sup>225</sup> Sean Bashforth, Proof, paras 3.7 – 3.8. LBN Local Plan (**CD3.4.1**).

<sup>226</sup> Para 3.36 (**CD3.4.1**).

<sup>227</sup> **CD3.2.4**.

<sup>228</sup> Louise Congdon, Proof, para 6.2.4.

<sup>229</sup> SOCG, Table 8.1, page 21 (**CD11.2**): “The economic and consumer benefits offered by the Proposed Amendments are recognised and accepted” by LBN.

<sup>230</sup> Louise Congdon, Proof, para 6.3.1.

Airport.<sup>231</sup> These wider economic impacts arise from effects such as increased trade, increased inward investment, agglomeration effects, labour market benefits or increased tourism. Both the direct benefits from the operation of the Airport and the connectivity it provides flow through to the broader economy through supply chain (i.e. indirect) and induced effects.

127. The socio-economic impacts of the Proposed Amendments are set out in detail in the Airport's Need Case.<sup>232</sup>

Direct, indirect and induced employment

128. The Proposed Amendments would deliver a substantial number of jobs within the local study area.
129. The Need Case demonstrates that the Proposed Amendments would generate the following number of direct, indirect and induced jobs:
- a. 1,870 new jobs (1,630 full time equivalent ('FTE')) across the local study area<sup>233</sup> compared to 2019, of which 1,340 jobs total are direct jobs at the Airport (1,170 FTE), which will be available to local people supporting the levelling up agenda in Newham and neighbouring boroughs; and
  - b. 2,180 jobs (1,900 FTE) in London compared to the 2019 position or 1,910 (1,660 FTE) compared to the 'do minimum' scenario.
130. The creation of new jobs is of real significance to local people, in particular those living in the areas of deprivation within East London. This is not just some abstract economic exercise; real jobs make real differences to people's lives – not only those who take the jobs, but also their families and wider communities. Indeed, the delivery of new jobs is aligned with local policy supporting the role of the Airport as an "*employment hub*"<sup>234</sup> and is a significant contribution to the 'levelling up' of the local area.

GVA

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<sup>231</sup> Louise Congdon, Proof, para 6.3.1.

<sup>232</sup> **CD1.60.**

<sup>233</sup> A 'local study area' has been defined for assessing the local economic impact of the Airport based on the area defined in the S106 Agreement (**INQ-30**). This comprises the London boroughs of Barking and Dagenham, Bexley, Greenwich, Hackney, Havering, Lewisham, Newham, Redbridge, Southwark, Tower Hamlets, Waltham Forest and Epping Forest in Essex.

<sup>234</sup> Pdf page 113 (**CD3.4.1**).

131. The economic footprint of the Proposed Amendments in terms of GVA is as follows:
- a. A net (additional) GVA of £205 million in the local study area compared to the 2019 position or £144 million compared to the 'do minimum scenario; and
  - b. A net (additional) GVA of £249 million in London compared to the 2019 position or £175 million compared to the 'do minimum' scenario.

Wider economic impacts

132. The Proposed Amendments will generate wider economic impacts arising from business productivity and inbound tourism.
133. The Need Case demonstrates that the wider effects would be as follows:
- a. The Airport's impact on the London economy from wider economic impacts from increased business productivity will increase to £526 million in GVA and 2,050 jobs (1,740 FTE). Compared to the 'do minimum' scenario this is an increase of 380 jobs (320 FTE) and £96 million in GVA;
  - b. Wider economic impacts for London from inbound tourism increasing to £559 million in GVA and 4,900 jobs (3,890 FTE). Compared to the 'do minimum' scenario this is an increase of 1,420 jobs (1,110 FTE) and £159 million in GVA; and
  - c. Social welfare benefits from factors such as passenger surface access time savings, producer and tax benefits and cost savings, allowing for construction costs, which total £371 million.<sup>235</sup>

134. As explained above, the Proposed Amendments would also result in the acceleration of the construction programme for the already approved CADP1 infrastructure and passenger facilities.

Timing of benefits realisation

135. In its written evidence, LBN sought to argue that there would be a disparity in timing between the delivery of socio-economic benefits and the environmental effects arising from Saturday afternoon operations. In short, LBN considered that whilst the benefits would inevitably accrue gradually as the passenger throughput increases, residents would be subject to the

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<sup>235</sup> Excluding carbon costs.

noise of Saturday afternoon flights immediately.

136. It is now accepted by LBN that the effect of condition 89, which limits the new slots on Saturday afternoons to 'new generation' aircraft means that the take up of these slots will inevitably be gradual.<sup>236</sup> This is not a case, therefore, where operations will *"go from 'zero' to 'full' overnight"*.<sup>237</sup> As the airlines secure new generation aircraft in order to operate on Saturday afternoons, the benefits of the quieter aircraft will also begin to be felt on other days of the week. In this regard there is clearly a symmetry between the take-up of slots on Saturday afternoons and the delivery of an overall reduction in noise. As demonstrated by the Airport's Need Case, there is also a link between the use of the extended operating hours on Saturdays and the rate at which throughput will grow, thereby delivering the socio-economic benefits.

#### **Outstanding issues in dispute**

137. As noted above, the scope of the dispute in respect of socio-economics is narrow. There is no dispute with LBN about the methodology for assessing socio-economic benefits, the scale of those benefits, or the fact that there is compliance with policies J1 and J3 of the Local Plan.
138. The sole outstanding point of dispute with LBN is whether the weight to be afforded to the benefits of the Proposed Amendments ought to be reduced in light of the very small shortfall in jobs for local people generated by the Airport, as against targets in the CADP1 section 106 obligation; in other words, historic job delivery.
139. There are three outstanding issues in dispute with HACAN East, as follows:
- a. The need to carry out, and relevance of, a full WebTAG appraisal and the associated environmental costs of the Proposed Amendments;
  - b. Displacement; and
  - c. Outbound tourism.
140. These are addressed in turn.

#### **Summary of the Airport's case on outstanding issues in dispute**

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<sup>236</sup> Chris Smith, XX (Day 5).

<sup>237</sup> Chris Smith, XX (Day 5).

#### Historic job delivery

141. LBN's argument on the extent to which local jobs targets have been met goes not to the scale of the socio-economic benefits, which is agreed, but the weight which should be afforded to these benefits in the overall planning balance.
142. In the OR, LBN identified that there were certain targets within the CADP1 section 106 agreement that had not been met.<sup>238</sup> The OR noted, however, that the Airport had provided "*reasonable justification*" for why this was the case. This included "*the difficulty in carrying out background checks, driving licence requirements and employability skills*".<sup>239</sup>
143. It is important to be clear that this concern does not relate to the number of jobs created at the Airport. It relates solely to the proportion of those jobs that are held by residents from LBN and the local area. As recorded in the OR, the matter relates primarily to the difficulty in carrying out background checks to determine whether or not an employee was resident of the local area. This has been particularly influenced by the effect of the pandemic. It is notable that in the latest set of data in the OR, the percentage of jobs for Newham residents was only 1% below the target, but the level of jobs from the local area was 9% over the target set out in the section 106. This demonstrates that whilst the extent to which local jobs targets are met will inevitably vary over time, this should not diminish the weight to be attributed to job generation overall.
144. In light of LBN's acceptance as to the nature of this issue, there is no justification for reducing the weight to be given to the socio-economic benefits of the Proposed Amendments.
145. We note that HACAN East also raised a point about historic job rates and the potential effects of future productivity improvements in relationship to the number of jobs that will be created. First, it needs to be recognised that Ms Congdon has already taken into account productivity improvements in her employment forecasts. Secondly, even if there were greater productivity improvements than she has assumed, any such additional productivity increases would apply in both the development case and the do minimum case, such that there would continue to be a net increase in employment between those two cases.

#### WebTAG and environmental costs

146. The relevance of the WebTAG appraisal guidance to the appeal has been the subject of much

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<sup>238</sup> Para 101 (CD4.3.1).

<sup>239</sup> Para 102 (CD4.3.1).



debate at the Inquiry. Dr Chapman's arguments are not new; they have been raised repeatedly at recent airport appeals. There is yet to be an airport decision in which these arguments are accepted.

147. Before considering the evidence on this issue in detail, there are a number of important preliminary points to note:

- a. It is no part of HACAN East's case that the Secretary of State cannot grant planning permission in the absence of a full WebTAG appraisal;<sup>240</sup>
- b. Accordingly, there can be no dispute that there is no 'requirement' to carry out a full WebTAG appraisal in support of the Proposed Amendments. Indeed, Dr Chapman's arguments that a planning application by a private developer and/or a determination by the Secretary of State on appeal or call-in is a "*government intervention*" has been considered in a number of recent planning appeals and consistently rejected;<sup>241</sup>
- c. At its highest, therefore, HACAN East's case is that the WebTAG guidance is relevant as a matter of "*best practice*"<sup>242</sup> and that a full WebTAG appraisal would be useful for the determination of the appeal;
- d. There is no dispute that a WebTAG appraisal has not been requested by LBN, the GLA, the Planning Inspectorate or the Secretary of State in the context of this appeal;<sup>243</sup>
- e. It is no part of HACAN East's case that WebTAG should be used to assess the environmental effects of the Proposed Amendments arising from noise.<sup>244</sup> HACAN East's case is solely that a WebTAG appraisal is relevant to understanding the scale of the economic effects of the Proposed Amendments, which requires environmental effects to be monetised;<sup>245</sup>
- f. With regard to the usefulness of a WebTAG appraisal, it is common ground that WebTAG is a blunt instrument; Dr Chapman himself explained that "*there are lots of*

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<sup>240</sup> Alex Chapman, XX (Day 6). Dr Chapman was asked in XX whether it was his view that the Secretary of State cannot properly determine the application in the absence of a WebTAG appraisal and his response was "*no*".

<sup>241</sup> **CD8.1, CD8.6, CD8.8.**

<sup>242</sup> Alex Chapman, EIC and XX (Day 6). Dr Chapman made clear in XX that his evidence was not about whether it "*has a mandatory level of requirement*" but about the relevance of WebTAG as best practice.

<sup>243</sup> Alex Chapman, XX (Day 6). Dr Chapman said he was "*not aware*" of any such request.

<sup>244</sup> This reflects the IEMA guidance at para 7.87 that makes clear that attempts to monetise noise effects do not impact the determination of the nature and extent of the noise impact, but that such approaches are likely to be found in the overall economic valuation of a development (**CD3.7.22**).

<sup>245</sup> This was clarified

*nuances that are not captured by monetisation”, as WebTAG necessarily relies on “simplifying assumptions”.<sup>246</sup>*

148. Against this background, the scope of the outstanding dispute is whether a WebTAG appraisal would be useful for assessing the economic effects of the Proposed Development in the determination of the appeal, such that the absence of such an appraisal weighs against granting planning permission. The Airport’s firm position is that whilst such an appraisal may be taken into account, it is not useful and therefore should be given limited, if any, weight, for the following three main reasons.
149. First, as explained by Mr Bashforth, carrying out a full WebTAG appraisal creates a parallel ‘balance’ to that of the overall planning balance.<sup>247</sup> It is simply not clear how the WebTAG appraisal maps onto the statutory framework provided by section 38(6) of the PCPA 2004. This means that whilst a WebTAG appraisal can be produced, it is very difficult to know what to do with it in the decision-making process.<sup>248</sup> This is why the WebTAG Guidance makes clear that planning decisions are to be considered “*in the normal way*”.<sup>249</sup>
150. This difficulty is compounded by the fact that a WebTAG appraisal incorporates matters that are already taken into account in the conventional planning balance. One such example is the way in which noise effects are accounted for. In the present appeal, there is no dispute that the noise effects from the Proposed Development have been taken into account through the assessment in the Environmental Statement.<sup>250</sup> However, the effect of Dr Chapman’s approach is that noise effects are taken into account both as an output of the Environmental Statement and in terms of the reducing the socio-economic benefits of the Proposed Amendments through the monetisation of changes in noise within the WebTAG appraisal.<sup>251</sup> Such an approach leads to double counting and highlights the difficulty with seeking to incorporate such an analysis into planning decision making, as opposed to option appraisal.<sup>252</sup>
151. Second, if the Secretary of State was minded to give weight to Dr Chapman’s appraisal, it is important to note that it continues to represent a significant overestimate of the economic costs of the environmental effects of the Proposed Development. In Dr Chapman’s Rebuttal,

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<sup>246</sup> Alex Chapman, XX (Day 6).

<sup>247</sup> Sean Bashforth, EiC (Day 11).

<sup>248</sup> Sean Bashforth, EiC (Day 11).

<sup>249</sup> Para 1.1.4 (**CD3.10.4**).

<sup>250</sup> Alex Chapman, XX (Day 6): accepted.

<sup>251</sup> Sean Bashforth, EiC (Day 11).

<sup>252</sup> Whilst not accepted by Dr Chapman, it is readily apparent that WebTAG is designed to apply to the appraisal of options, not planning decision making. Figure 1 (**CD3.10.3**).

he sought to monetise the noise effects of the Proposed Development in accordance with WebTAG. The WebTAG work book ascribes a monetary value for changes that move exposure from one 1dB band to another. In Dr Chapman's Rebuttal, he assumed that every person reported to experience a change of between 0.1 to 1.9dB in the Environmental Statement experience an increase in noise levels of 1dB (the midpoint of the band).<sup>253</sup> As a result of Mr Greer's evidence, Dr Chapman adjusted his assessment based on the tables in Appendix 1 to Mr Greer's proof. However, as explained by Mr Greer in his evidence and in the note submitted on behalf of the Airport in response to Dr Chapman's updated assessment, the results in the Environmental Statement still show that the noise increases are lower than the adjusted figures used by Dr Chapman.<sup>254</sup> The average change in noise levels is 0.3dB.<sup>255</sup> Not only does this render Dr Chapman's monetised figures unreliable, but it highlights the difficulty with using a WebTAG appraisal for these purposes. For the reasons explained in the Airport's note, there also remains issues with Dr Chapman's monetisation of carbon emissions. In particular, Dr Chapman's figures do not properly adjust for the displacement of carbon as required by the Guidance.<sup>256</sup> Indeed, if the WebTAG Guidance were properly applied, as Ms Congdon's analysis in her rebuttal to Dr Chapman's updated monetised figures shows, the result would indicate higher social welfare benefits than assessed in the Need Case, including the costs of carbon.<sup>257</sup>

152. Third, the lack of a WebTAG appraisal was specifically considered by the Panel of Inspectors in the Luton 'P19' decision, who had regard to the consideration of the matter in the Bristol decision. The conclusion reached by the Panel was that the lack of a WebTAG appraisal did not weigh against the proposals.<sup>258</sup> This was accepted by the Secretary of State.<sup>259</sup>
153. In conclusion, there is no requirement for such an appraisal to be carried out and the absence of such does not weigh against the proposals. It is readily apparent that the attempt to monetise environmental costs within the framework of WebTAG is fraught with difficulty and ultimately not very useful. For these reasons, the Airport considers that Dr Chapman's appraisal should be afforded little or no weight in the planning balance.

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<sup>253</sup> Tables 8-54 and 8-56 (CD1.15). Alex Chapman, Rebuttal, Table 1.

<sup>254</sup> Tables 8-21 and 8-25 (CD1.15). Para 13 (INQ/29).

<sup>255</sup> Tables 8-21 and 8-25 (CD1.15). Para 13 (INQ/29).

<sup>256</sup> Para 8 (INQ/29).

<sup>257</sup> INQ/29.

<sup>258</sup> Para 15.190 (CD8.6).

<sup>259</sup> Para 37 (CD8.6).

### Displacement

154. 'Displacement' is the concept of economic activity in one location taking or moving economic activity away from somewhere else, or some other economic activity. In other words, it is the idea that if economic activity does not happen in one location or in another sector, it will merely happen elsewhere.
155. HACAN East seeks to argue that the effect of displacement of employment means that the socio-economic effects of the Proposed Amendments are less than those that have been calculated.<sup>260</sup> In so doing, Dr Chapman argues that the Airport has failed to distinguish between local and national impacts.<sup>261</sup>
156. With regards to displacement, there are three types of displacement that should not be conflated: (i) passenger displacement; (ii) aircraft displacement, and (iii) displacement in terms of employment.<sup>262</sup> With regards to passenger displacement, the Need Case clearly indicates that if the Airport does not expand, the additional passengers would be forced to use alternative airports. It is for this reason that the disbenefit of increased journey time to the passenger's second choice of airport is captured in the economic assessment as 'journey time savings'. In this regard, passenger displacement has been allowed for in the assessment. With regards to aircraft displacement, if aircraft could not fly from the Airport, they would fly from another airport. The positioning aircraft to other airports during the weekend closure is a common practice at present. The means that the carbon emissions would be fully displaced and so are not, in that sense, additional at a national level.
157. With regards to the displacement in terms of employment, Dr Chapman overlooks the significance of jobs at the local level. Indeed, it is no surprise that LBN has not sought to pursue an argument on the basis of displacement. As Mr McFadden has made clear, LBN welcome the generation of local jobs and GVA, which contribute towards strategic objectives for the area.<sup>263</sup> The particular policy context here identifies the need for job creation and economic growth within the local area, in order to address the multiple indicators of deprivation in East London. The generation of jobs at, say, Uttlesford, is of no direct benefit to the residents of LBN. The concept of generating economic growth in particularly deprived parts of the UK is what underpins the Government's 'levelling up' agenda. Indeed, it is for this reason that the

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<sup>260</sup> Alex Chapman, Proof, para 5.1 and developed in EiC (Day 5).

<sup>261</sup> Alex Chapman, Proof, para 5.1.

<sup>262</sup> Louise Congdon, EiC (Day 6).

<sup>263</sup> Mr McFadden, XX (Day 10).

focus in the Need Case is on the benefits that would be realised locally.<sup>264</sup>

158. Finally, the issue of displacement was considered in the Luton ‘P19’ decision. The Panel, with which the Secretary of State agreed,<sup>265</sup> concluded that the potential for displacement or spending did not weigh against the proposal.<sup>266</sup> In so finding, the Panel noted that the Panel in the Bristol decision had found it to be an unusual approach to favour economic development at airports elsewhere.

#### Outbound tourism

159. The argument around outbound tourism and the so-called ‘tourism spending deficit’ was noted in passing in Dr Chapman’s Proof but developed more fully in his oral evidence.<sup>267</sup> Dr Chapman argues that the fact that UK residents typically spend more abroad than inbound tourists spend in the UK should weigh against the Proposed Amendments.
160. Arguments relating to the negative economic impacts associated with outbound tourism are not new, but are often raised in the context of airport expansion.<sup>268</sup> Such an approach ignores the well-established social and welfare benefit to outbound tourism. National policy both recognises these benefits and encourages outbound tourism. As explained above, there is no policy that seeks to limit the ability of UK residents to travel overseas for holidays, to visit relatives or for business in order to retain spending domestically and improve the UK’s balance of payments. There is therefore no policy basis on which to reduce the weight to be given to the socio-economic and consumer benefits of the Proposed Amendments on the basis of the so-called ‘spending deficit’.

#### **Conclusions on socio-economic benefits**

161. The socio-economic benefits of the Proposed Amendments are substantial and their delivery in this area is strongly supported by policy. Importantly, they represent an increase over those delivered in respect of CADP1, which is a material change from when the planning balance was struck in respect of that application.
162. Having regard to the levels of unemployment and deprivation in the local area, significant weight should be afforded to these socio-economic benefits. The introduction of operations

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<sup>264</sup> Louise Congdon, Rebuttal, para 3.5.1.

<sup>265</sup> Pdf page 7, para 37 (CD8.6).

<sup>266</sup> Pdf page 131, para 15.185 (CD8.6).

<sup>267</sup> Alex Chapman, Proof, para 4.6.5.

<sup>268</sup> For example, similar arguments were advanced at the Bristol Airport inquiry.

on Saturday afternoons is integral to the realisation of these benefits.

## **NOISE**

### **Introduction**

163. As with all development that seeks to deliver substantial socio-economic benefits, there will inevitably be some degree of environmental impact associated with the delivery of those benefits. It falls to the planning system to reconcile the national, regional and local needs with the impacts that are borne most directly by the local community. The delivery of infrastructure improvements, such as airport expansion, is no different.
164. The impact of noise is one of the environmental effects that policy recognises as a key concern for airport development.<sup>269</sup> Both MBU and the OANPS identifies the need to strike a balance between economic, social and environmental goals. It is for local planning authorities in the first instance, and Inspectors or the Secretary of State on appeal, to carry out this balancing exercise within the framework of national, regional and local policy.<sup>270</sup>
165. It is notable that noise is the only environmental effect that is the subject of a reason for refusal. It is important to stress, however, that even with noise, the objection is not based on the 'overall' or 'total' noise effects; these reduce compared to 2019 or the currently permitted noise contours. The reason for refusal relates exclusively to the noise effects arising from the additional three early morning flights and the extended operating hours on Saturday afternoons.

### **Scope of dispute at close of evidence**

166. The scope of the dispute between the Airport and LBN in respect of noise is strikingly narrow. There are significant areas of agreement, as follows:
- a. There is substantial agreement about the methods, noise indices and modelling outputs on noise set out within the Airport's Environmental Statement.<sup>271</sup> This includes the appropriateness of the future scenarios assessed; the forecasts used for the noise assessment; the study area; the air noise computation methodology and

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<sup>269</sup> APF (CD), page 11, para 16.

<sup>270</sup> MBU (CDxx), page 4, para 1.9.

<sup>271</sup> SOCG, Table 9.1, pages 23 – 26 (CD11.2).

modelling software; the inputs to the model; the identification of sensitive receptors; the noise indices used;<sup>272</sup> the computed noise outputs; the conclusion that the number of people exposed to significant levels of day time noise will reduce compared to the 2019 baseline, and that those levels will be in line with that predicted for the CADP1 permission, with a reduction in the size of the 57dB LAeq16h contour by 20% compared with the contour area limit specified in the CADP1 permission;<sup>273</sup>

- b. Significantly, there is no dispute that on the basis of the conventional LAeq metrics<sup>274</sup> and, taking account of the proposed mitigation measures, the Proposed Amendments would not give rise to a significant adverse effect in respect of air noise;<sup>275</sup>
- c. There is now no dispute that the proposed mitigation is in accordance with the policy requirements in the NPSE to avoid significant adverse effects on health and quality of life (above SOAEL) through sound insulation and to “mitigate and minimise” noise between the LOAEL and the SOAEL;<sup>276</sup>
- d. There is no dispute that there are no significant environment effects arising from construction noise, vibration or surface access;<sup>277</sup>
- e. There is no dispute that there are no significant environment effects arising from aircraft ground noise, albeit LBN considers that the increased ground noise on Saturday afternoons must be taken into account when considering the significance of the reduction in curfew;<sup>278</sup> and
- f. As indicated above, it is agreed that the Proposed Amendments do not give rise to significant adverse population health effects, including as a result of noise. It is therefore no part of LBN’s case that the Proposed Amendments give rise to unacceptable impacts on population health.<sup>279</sup> The reason for refusal relates solely

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<sup>272</sup> This is subject to LBN’s position that the separate assessment of weekend noise is not appropriate. SOCG, Table 9.1, page 24 (CD11.2).

<sup>273</sup> SOCG, Table 9.1, pages 23 – 26 (CD11.2).

<sup>274</sup> I.e. the metrics that are identified in Government policy and guidance as the basis of decision making (CD3.7.8, paragraph 9 of the Executive Summary and para 2.72 and CD3.7.4, paras 8.8 and 8.11).

<sup>275</sup> Rupert Thornely-Taylor, XX (Day 7).

<sup>276</sup> Rupert Thornely-Taylor, XX (Day 7). Mr Thornely-Taylor was asked in XX whether the proposed mitigation was “in accordance with policy and the various NPSE thresholds” and he responded “yes” and Rupert Thornely-Taylor, Proof, 4.10.5

<sup>277</sup> SOCG, Table 9.2, page 27 (CD11.2).

<sup>278</sup> SOCG, Table 9.2, pages 27 – 28 (CD11.2).

<sup>279</sup> SOCG, Table 13.1, pages 37 – 39 (CD11.2).

to the impact on 'amenity'.

167. LBN's case turns wholly on the need to assess the "*non-technical*" significance of introducing flights on Saturday afternoon, and the fact that the noise arising from these flights would be "*plain as a pikestaff*".<sup>280</sup>
168. Whilst the reason for refusal identified noise from both the early morning flights and those on Saturday afternoons, there has been a notable absence of any discussion at the Inquiry as to the effects of the early morning flights. Indeed, whilst LBN maintains that the Saturday afternoon flights are significant for "*non-technical*" reasons which cannot be captured by any environmental impact assessment, no comparable argument has been advanced in respect of the early mornings. Indeed, even on LBN's case, there is no reason why any special "*non-technical*" approach would be required to assess the significance of three additional flights within a period that the Airport is already operating. The early morning flights (0630-0659) are part of the night noise assessment (2300-0700) and it was rightly accepted by Mr Thornley-Taylor that the change in the  $L_{Aeq8hr}$  metric in relation to the three additional flights was not a significant adverse effect<sup>281</sup>.
169. On the basis that it is common ground that the Proposed Amendments (other than those concerning operating hours on Saturday afternoons) do not give rise to any significant effects, that part of the reason for refusal clearly falls away.
170. The specific issues in dispute raised by HACAN East are identified later in this section. By way of a preliminary observation, however, HACAN East's case has developed since the submission of its Statement of Case and written evidence, which focussed upon the effects of the Proposed Amendments outside the 57dB noise contour. The way in which the HACAN East's concern was cast in Dr Nold's Proof was that the data gathered from a citizen science study "*raises questions about the accuracy of the model in being able to predict the noise impact of a future expanded London City airport away from the proximity of the runway*."<sup>282</sup> Mr Stewart's evidence too was predicated on the need to use supplementary metrics, to reflect disturbance outside the conventional noise contours. At no point was any question raised about the correctness of those contours or the noise modelling that underpins them. At that stage, therefore, it was understood that HACAN East was not seeking to question the

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<sup>280</sup> Rupert Thornely-Taylor made clear that "*a judgment has to be made on the basis of non-technical considerations*".

<sup>281</sup> Rupert Thornely-Taylor, XX (Day 7)

<sup>282</sup> Christian Nold, Proof, para 3.4.



calculation of noise effects within the contour.

171. During the course of the inquiry, however, HACAN East's case developed into a challenge to the Airport's calculation of air noise effects in the Environmental Statement. This is notwithstanding that it did not call evidence from a technically qualified noise expert. For the reasons set out in detail below, HACAN East's criticism of the noise contours is based on a complete misunderstanding about how new generation aircraft impact those contours.

### **Policy context**

172. The noise policy and guidance context is set out in some detail in Mr Greer's proof of evidence<sup>283</sup> and so what follows is a summary of some of the key points.

#### National policy context

173. The APF defines the Government's objectives and policies on the impacts of aviation. In respect of noise, the APF identifies that the Government's overall objective is to *"limit and where possible reduce the number of people in the UK significantly affected by aircraft noise"*, consistently with the Noise Policy Statement for England 2010 ('NPSE').<sup>284</sup> It makes clear that the Government wants to *"strike a fair balance"* between the negative impacts of noise and the positive impacts of flights. In this context, the APF sets out that:

*"As a general principle, the Government therefore expects that future growth in aviation should ensure that benefits are shared between the aviation industry and local communities"*.<sup>285</sup>

174. The guiding principle for the provision of noise mitigation as set out in the APF is that *"efforts should be proportionate to the extent of the noise problem and the number of people affected"*. It is *"neither reasonable nor realistic for such actions to impose unlimited costs on industry"*.<sup>286</sup> Also of note is that the APF refers to 'curfew' in the context of operating hours, as distinct from 'respite', which relates to the planned and defined periods of noise relief for those living under a flight path through the use of multiple routes or alternating patterns of operation.<sup>287</sup>

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<sup>283</sup> Richard Greer, Proof, section 3

<sup>284</sup> (CD3.5.1), page 11, para 17. NPSE is at (CD3.7.2)

<sup>285</sup> (CD3.5.1), page 55, para 3.3.

<sup>286</sup> (CD3.5.1), page 60, para 3.24.

<sup>287</sup> Paras 3.32 and 3.35 (CD3.5.1). This is consistent with the Airports National Policy Statement at para 5.62 (CD3.5.2) and the Government's Air Navigation Guidance, Glossary in Annex A (CD3.5.9).

175. The NPSE<sup>288</sup> provides the policy framework for noise management decisions, in order to ensure that noise levels do not place an unacceptable burden on society. The NPSE introduces the following concepts for categorising noise effects:
- a. 'No Observed Adverse Effect Level' ('NOAEL'), being the level at which no effect can be detected;
  - b. 'Lowest Observed Adverse Effect Level' ('LOAEL'), being the level above which effects on behaviour and adverse impacts on health and quality of life can be detected; and
  - c. 'Significant Observed Adverse Effect Level' ('SOAEL'), being the level above which significant adverse effects on health and quality of life occur.
176. The policy aim in the NPSE is to avoid, minimise, mitigate and, where possible, reduce significant adverse impacts on health and quality of life within the context of sustainable development.<sup>289</sup>
177. With specific regard to aviation noise, the Planning Practice Guidance<sup>290</sup> provides guidance on establishing whether noise is likely to be a concern and the relevant actions to be taken for noise at different levels.<sup>291</sup> It explains that as noise crosses the LOAEL threshold, it *“starts to cause small changes in behaviour and attitude”* such that *“consideration needs to be given to mitigating and minimising those effects”*.<sup>292</sup> However this is expressly subject to the need to take account of *“the economic and social benefits being derived from the activity causing the noise”*.<sup>293</sup>
178. The PPG defines SOAEL as the level at which *“a material change in behaviour such as keeping windows closed for most of the time or avoiding certain activities during periods when the noise is present”*.<sup>294</sup> The PPG continues, *“If the exposure is predicted to be above this level the planning process should be used to avoid this effect occurring, for example through the choice of sites at the plan-making stage, or by use of appropriate mitigation such as by altering the design and layout. While such decisions must be made taking account of the economic and social benefit of the activity causing or affected by the noise, it is undesirable for such exposure*

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<sup>288</sup> **CD3.7.2.**

<sup>289</sup> Para 1.7 (**CD3.7.2**).

<sup>290</sup> Paragraph 005 Reference ID: 30-005-20190722 (**CD3.7.7**).

<sup>291</sup> Paragraph 005 Reference ID: 30-005-20190722 (**CD3.7.7**).

<sup>292</sup> Paragraph 005 Reference ID: 30-005-20190722 (**CD3.7.7**).

<sup>293</sup> Paragraph 005 Reference ID: 30-005-20190722 (**CD3.7.7**).

<sup>294</sup> Paragraph 005 Reference ID: 30-005-20190722 (**CD3.7.7**).

to be caused.”<sup>295</sup> The PPG also introduces the concept of ‘Unacceptable Adverse Effect Level’ (‘UAEL’), which is described as follows: *“At the highest extreme, noise exposure would cause extensive and sustained adverse changes in behaviour and / or health without an ability to mitigate the effect of the noise. The impacts on health and quality of life are such that regardless of the benefits of the activity causing the noise, this situation should be avoided.”*<sup>296</sup> The noise hierarchy in the PPG identifies that the relevant action in respect of such noise levels is “prevent”.<sup>297</sup>

179. The PPG also makes clear that noise must be looked at in the context of wider characteristics of a development proposal, its likely users and its surroundings, as these can have an important effect on whether noise is likely to pose a concern.<sup>298</sup>
180. Paragraph 191 of the NPPF (2023) sets out of the aim of ensuring that development is appropriate for its location taking into account the likely effects of pollution on health, living conditions and the natural environment. In so doing, proposals should mitigate and reduce to a minimum potential adverse impacts from noise, avoid noise from giving rise to significant adverse impacts on health and quality of life.<sup>299</sup> It is important to note that findings of noise levels above SOAEL or LOAEL do not mean that there is a ‘significance’ effect in terms of EIA (as explained further below).
181. MBU recognises that the development of airports can have negative as well as positive local impacts, including on noise levels. It notes that, as airports look to make the best use of their existing runways, it is important that communities surrounding those airports share in the economic benefits, and that adverse impacts such as noise are mitigated where possible.<sup>300</sup>
182. In March 2023, the Government published an update to its policy on aviation noise. The Overarching Aviation Noise Policy Statement (‘OANPS’)<sup>301</sup> states that:  
  
*“The Government’s overall policy on aviation noise is to balance the economic and consumer benefits of aviation against their social and health implications in line with the International Civil Aviation Organisation’s Balanced Approach to Aircraft Noise Management. This should*

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<sup>295</sup> Paragraph 005 Reference ID: 30-005-20190722 (**CD3.7.7**).

<sup>296</sup> Paragraph 005 Reference ID: 30-005-20190722 (**CD3.7.7**). It is agreed that no one is forecast to be exposed to levels above the UAEL threshold for either day or time noise as a result of the Proposed Amendments.

<sup>297</sup> It is common ground that the Airport does not give rise to such effects with or without the Proposed Amendments, such that there is compliance with paragraph 180 of the NPPF.

<sup>298</sup> Paragraph: 002 Reference ID: 30-002-20190722 (**CD3.7.7**).

<sup>299</sup> **CD3.2.1.**

<sup>300</sup> Para 1.22 (**CD3.5.03**).

<sup>301</sup> **CD3.7.03.**

*take into account the local and national context of both passenger and freight operations, and recognise the additional health impacts of night flights.*

*The impact of aviation noise must be mitigated as much as is practicable and realistic to do so, limiting, and where possible reducing, the total adverse impacts on health and quality of life from aviation noise.”*

183. The Government has made clear that the words “*limit, and where possible reduce*” in the APF remains the appropriate wording.<sup>302</sup> The OANPS highlights, however, that the economic and consumer benefits may offset an increase in the adverse effects of noise, explaining that “*an overall reduction in total adverse effects is desirable, but in the context of sustainable growth an increase in total adverse effects may be offset by an increase in economic and consumer benefits. In circumstances where there is an increase in total adverse effects, “limit” would mean to mitigate and minimise adverse effects, in line with the [NPSE]”<sup>303</sup> (underlining added). This is an important clarification of the ‘limit and where possible reduce’ policy approach.*
184. With regards to how the approach in the OANPS is to be applied, as explained by Mr Bashforth, what it requires is that the adverse noise effects are balanced against the positive noise improvements, as well as the socio-economic benefits of a development. In this regard, the OANPS refers to the desirability that the “*total adverse effects*” are reduced, but acknowledges that an increase in total adverse effects can be offset by socio-economic and consumer benefits. This takes place however within the overall planning balance, rather than importing a requirement to conduct a ‘balance within a balance’.<sup>304</sup>
185. It is also notable that nowhere in policy is Saturday afternoon identified as being of particular sensitivity.<sup>305</sup>

#### Local policy context

186. Reason for refusal 1 refers to policies D13 and T8 of the London Plan and policies SP2 and SP8 of the Local Plan.<sup>306</sup>
187. Policy D13 (agent of change) of the London Plan states that “*new noise and nuisance generating development*” proposed close to residential and other noise-sensitive uses should

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<sup>302</sup> Page 3 (CD3.7.03).

<sup>303</sup> Page 3 (CD3.7.03).

<sup>304</sup> Sean Bashforth, EiC (Day 11).

<sup>305</sup> This is agreed by Rupert Thornely-Taylor, XX (Day 7).

<sup>306</sup> CD4.4.

put in place measures to mitigate and manage any noise impacts.<sup>307</sup> It further states that development proposals should not normally be permitted where they have not clearly demonstrated how noise and other nuisances will be “*mitigated and managed*”.<sup>308</sup> It is a matter of common ground that this part of the policy refers to the principles in the noise hierarchy in the PPG.<sup>309</sup> The policy also makes clear, however, that established noise generating uses should be allowed to “...*remain viable and can continue or grow without unreasonable restrictions being placed upon them*”<sup>310</sup> (underlining added).

188. Policy T8 (aviation) of the London Plan requires that environmental and health impacts of aviation-related development are fully acknowledged and should include mitigation measures that fully meet external and environmental costs.<sup>311</sup> It further states that any airport expansion scheme must be appropriately assessed, and “*if required*”, demonstrate an overriding public interest or no suitable alternative with fewer environmental effects.<sup>312</sup> The policy also requires proposals to take full account of environmental impacts and the views of affected communities.<sup>313</sup>
189. Newham Local Plan Policy SP2 (healthy neighbourhoods) requires development proposals to address various strategic principles.<sup>314</sup> The policy identifies the need to improve employment levels and reduce poverty, as factors that are important for the delivery of health neighbourhoods, whilst attending to the environmental impacts of economic development including public safety, noise, vibration and odour.<sup>315</sup> The supporting text states that the policy should be implemented generally through the deployment of other policies including Policy SP8.
190. Newham Local Plan Policy SP8 (ensuring neighbourly development) requires all development “*to achieve good neighbourliness and fairness from the outset by avoiding negative and maximising positive social, environmental and design impacts...*”.<sup>316</sup> The supporting text makes specific reference to the Airport and to its presence close to high profile regeneration sites and for the design of those developments to respond to noise, whilst also not allowing

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<sup>307</sup> Criterion C (**CD3.3.1**).

<sup>308</sup> Criterion E (**CD3.3.1**).

<sup>309</sup> Mr McFadden, XX (Day 10). Mr Farmer, XX (Day 10).

<sup>310</sup> Criterion B (**CD3.3.1**).

<sup>311</sup> Criterion B (**CD3.3.1**).

<sup>312</sup> Criterion B (**CD3.3.1**).

<sup>313</sup> Criterion E (**CD3.3.1**).

<sup>314</sup> **CD3.4.1**.

<sup>315</sup> Criteria 1a(ii) (**CD3.4.1**).

<sup>316</sup> Criteria 1a) (**CD3.4.1**).

unfettered intensification of disturbance.<sup>317</sup>

## **Wider context**

### 'Uniqueness' of the Airport

191. It has been said by HACAN East that the Airport is 'unique' in terms of its proximity to residential development. As explained by Mr Greer, the Airport has a smaller population count within its contours than Heathrow, Birmingham or Manchester.<sup>318</sup> Nor is the density of new development nearby to the Airport unique; many airports are situated within areas of growth. What the level of new development does demonstrate, however, is that developers are capable of designing new development to suitable standard to co-exist alongside the Airport in accordance with the agent of change principle.<sup>319</sup>

### Existing controls on noise

192. There are a number of existing controls on the Airport that are aimed at mitigating the effects of noise on residential amenity. These include the following:
- a. Aircraft movement limits (Conditions 22 to 27 of the CADP1 planning permission);
  - b. Restrictions on airport operating hours (Conditions 8 and 17 of the CADP1 Permission);
  - c. Noise abatement departure and arrival procedures (as defined by the NOMMS that is secured by Conditions 30 and 31 of the CADP1 Permission);
  - d. Combined noise and track monitoring systems (as defined by the NOMMS, secured by Conditions 30 and 31 of the CADP1 Permission);
  - e. Quiet operating procedures (as defined by the NOMMS, secured by Conditions 31 of the CADP1 Permission);
  - f. Departure noise incentives and penalties scheme, including a fixed penalty for exceeding upper noise limits is charged at a rate of £600 per dB of exceedance. The money from any penalties accrued is added to the Community Fund;
  - g. Ground noise controls, including restrictions on the timing and noise levels of ground

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<sup>317</sup> Para 2.113 (**CD3.4.1**).

<sup>318</sup> Pdf page 20, Table 1 (**CD3.7.4**).

<sup>319</sup> Mr Greer, EiC (Day 9).

engine running and limitations on the use of Auxiliary Power Units (Condition 8 of the CADP1 Permission);

- h. Noise contour area limits set by the Noise Contour Strategy that currently seek to reduce the area of the noise contour by 2030 and every 5 years thereafter (Condition 33 of the CADP1 Permission);
- i. Quota Count limits in accordance with the Airport's innovative Aircraft Noise Categorisation Scheme (Conditions 18 and 19 of the CADP1 Permission);
- j. Airport perimeter noise barriers (Conditions 53 and 54 8 of the CADP1 planning permission);
- k. Sound Insulation Schemes (SIS) secured by the section 106 agreement for the CADP1 Permission; and
- l. Community Fund that is secured by the section 106 agreement for the CADP1 Permission.

193. Indeed, the number of noise related controls at the Airport is quite unique. A number of these measures are to be enhanced or amended as part of the Proposed Amendments, as explained below. As explained by Mr Greer and Mr Bashforth, it is necessary to consider the suite of mitigation measures in the round, rather than considering the effect of changing one measure in isolation. Whilst the Proposed Amendments would amend the operating hours to permit flights on Saturday afternoons, they would also reduce the overall noise contour, introduce a condition to limit the new slots to new generation aircraft, and improve the noise insulation scheme and community fund. It is simply not appropriate to focus on one area of change without properly acknowledging and taking account of the others.

### **The Airport's assessment of noise effects**

#### Matters of approach

194. The noise effects of the Proposed Amendments are assessed in detail in Chapter 8 of the Environmental Statement.<sup>320</sup> The assessment includes noise generated by four sources, namely, air noise, ground noise, road traffic noise and construction noise.<sup>321</sup>

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<sup>320</sup> **CD1.15.**

<sup>321</sup> Pdf page 3, para 8.1.1 (**CD1.15**).

195. As noted above, exceeding a LOAEL threshold and, in particular, exceeding a SOAEL threshold, concepts introduced by the NPSE, does not in itself equate to a finding of ‘significance’ in EIA terms.
196. 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 in 2025, 2027 and 2031, when the airport would reach 9 mppa.<sup>322</sup> The Environmental Statement also compares the noise levels against the 2019 baseline.<sup>323</sup> A sensitivity test has been carried out to reflect the faster and slower growth scenarios, which result in slightly different forecast fleet mixes.<sup>324</sup> Further sensitivity tests are presented in the Environmental Statement to reflect a scenario in which the number of early morning movements meet the proposed limit every day, notwithstanding that historically the number of movements have been less than this limit, as well as a sensitivity analysis for an alternative fleet mix.<sup>325</sup>
197. The ES uses the daytime  $L_{Aeq, 16 \text{ hour}}$  and the night time  $L_{Aeq, 8 \text{ hour}}$  as primary metrics.<sup>326</sup> These metrics represent the air noise during the 92-day summer period; in other words, the busiest part of the year.<sup>327</sup> These metrics have been confirmed by Government to be the most appropriate basis for decision making, as they are best correlated with community response.<sup>328</sup>
198. In addition to the  $L_{Aeq}$  noise contours, which are typically produced based on the average modal split, the Environmental Statement also presents single mode contours. These contours are produced on the basis of either 100% easterly or westerly operations for the entire 92-day summer period. These show the noise exposure levels when operations have a single runway directions. However, because the Airport only operates on average 30% of the time in easterly mode and 70% in westerly mode, the contours are in that sense an “*artificial worst case*”<sup>329</sup> for those who experience either easterly or westerly operations. As explained by Mr Greer, there are no specific criteria available to rate noise levels associated with single

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<sup>322</sup> Richard Greer, Proof, para 5.4.2.

<sup>323</sup> Richard Greer, Proof, para 5.4.2.

<sup>324</sup> Richard Greer, Proof, section 8.1.

<sup>325</sup> Richard Greer, Proof, para 5.4.4.

<sup>326</sup> Richard Greer, Proof, para 5.7.2.

<sup>327</sup> Richard Greer, Proof, para 5.7.3.

<sup>328</sup> Defined in Government policy in its consultation response on airspace change at paras 9, 2.10 and 2.72 (**CD3.7.8**) and reconfirmed by the CAA in 2021 for community annoyance (**CD3.7.4**), in 2021 for self-reported sleep disturbance (**CD3.7.5**) and in 2022 for awakenings (**CD3.7.30**).

<sup>329</sup> Christian Nold, XX (Day 8): agreed.



mode contours.<sup>330</sup>

199. Whilst HACAN East has invited the Secretary of State to place great weight upon the single mode contours, they are not recommended as a basis for decision-making in Government policy. Indeed, SoNA 2014 concluded that they were “*unsuitable for decision making*” but that they may be helpful for portraying exposure and changes to exposure.<sup>331</sup>
200. The primary metrics are supported in the Environment Statement by a range of supplementary metrics, which include noise awakenings at night-time and the number of aircraft movements where the maximum noise level exceeds 60 dB or 65 dB  $L_{Amax}$  during the night and day respectively, which are the ‘Nabove’ metrics suggested by Government and CAA guidance.<sup>332</sup>
201. In order to seek to capture the effects of the reduction in the Saturday curfew, the Environmental Statement also presents a specific assessment of weekend noise in the summer period as a supplementary metric.<sup>333</sup> There is, however, no specific guidance on how changes in weekend noise should be interpreted.<sup>334</sup> For this assessment the same criteria regarding absolute noise levels and relative changes in noise levels have been used as have been used to assess the impacts of daytime air noise. This actually represents a conservative approach, as any noise level or change in noise level experienced over the weekend would be expected to have a lesser impact than the same noise level or change in noise experienced seven days a week.<sup>335</sup>
202. It is notable that a separate assessment of weekend noise was included within the scoping report submitted to LBN. Whilst LBN do not now consider that reliance can be placed on this metric, at that time it indicated that the separate consideration of weekend noise seemed “*appropriate*”.<sup>336</sup>
203. The ES assigns noise levels to LOAEL, SOAEL and UAEL for each noise source.<sup>337</sup> If a receptor is above the LOAEL then there is the potential for a significant effect in EIA terms, depending on the magnitude of change. Above the SOAEL, a smaller change is required for a significant

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<sup>330</sup> Richard Greer, Proof, para 5.7.7.

<sup>331</sup> Pdf page 72, para 8.11 (**CD3.7.4**).

<sup>332</sup> Richard Greer, Proof, para 5.7.17.

<sup>333</sup> Richard Greer, Proof, para 5.7.19.

<sup>334</sup> Richard Greer, Proof, para 5.8.14.

<sup>335</sup> Richard Greer, Proof, para 5.8.14.

<sup>336</sup> **CD1.34**.

<sup>337</sup> ES, Appendix 8.1 (**CD1.37**). Richard Greer, Proof, para 5.8.14.

effect in EIA terms to be found.

204. The LOAEL adopted for the purpose of the EIA is 51 dB  $L_{Aeq,16h}$  for day time air noise and 45 dB  $L_{Aeq,8h}$  for night-time air noise.<sup>338</sup> The adopted SOAEL is 63 dB  $L_{Aeq,16h}$  for daytime air noise and 55 dB  $L_{Aeq,8h}$  for night time air noise.<sup>339</sup> These levels are consistent with policy and have been widely used in recent decision-making.<sup>340</sup> Neither LBN nor HACAN East challenge these levels. In terms of the magnitude of change, for receptors where the noise level would be between the LOAEL and the SOAEL, a value of 3 dB was adopted as the threshold for a significant change. In respect of receptors where the noise level would be above the SOAEL, a lesser threshold of 2 dB was adopted. A sensitivity analysis has also now been carried out to assess the effects of adopting a 1 dB magnitude of change criterion above the SOAEL.<sup>341</sup> As explained below, this assessment does not change the conclusions regarding significance of effects in the Environmental Statement.

#### Summary of air noise effects

205. The overall noise impacts of the Proposed Amendments are set out in full in Chapter 8 of the Environmental Statement that accompanied the application.<sup>342</sup>
206. The conclusion reached in the Environmental Statement is that, taking account of enhanced embedded mitigation, there are no new or materially different operational noise effects due to the Proposed Amendments.<sup>343</sup> Due to the increased number of aircraft movements, the Proposed Amendments would generate more noise than the 'do minimum' scenario in 2031, but less than the 2019 baseline, due to the greater use of quieter new generation aircraft.

#### *Daytime noise*

207. With regards to daytime noise, the number of people exposed with the Proposed Amendments is lower than in the 'do minimum' ('DM') scenario in 2025 and 2027 due to the faster take up of 'new generation aircraft', but slightly higher than in the DM scenario in 2031<sup>344</sup>, but all changes in daytime noise levels are rated as 'negligible'.<sup>345</sup> Compared to the 'do minimum' scenario, there are two more schools above the threshold level of 52 dB  $L_{Aeq,16hr}$ ,

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<sup>338</sup> Richard Greer, Proof, para 5.8.1.

<sup>339</sup> Richard Greer, Proof, para 5.8.1.

<sup>340</sup> Richard Greer, Proof, para 5.8.1 – 5.8.3.

<sup>341</sup> Richard Greer, Proof, Appendix 1.

<sup>342</sup> **CD1.15.**

<sup>343</sup> Richard Greer, Proof, Table 9.1, page 68.

<sup>344</sup> ES Table 8-23 (**CD1.15**)

<sup>345</sup> Richard Greer, Proof, Table 7.14, page 53.

no change in the number of residential healthcare buildings, and six more amenity areas exposed to noise levels equal to or above the threshold level of 55 dB  $L_{Aeq,16hr}$ . All of the changes in noise at these receptors between LOAEL and SOAEL are less than 3 dB, therefore the effects are rated as not significant. Those changes in noise levels at receptors above SOAEL are below 2dB and also rated not significant.

208. As noted above, there is no dispute with LBN that on the basis of the primary metrics, the Proposed Amendments would not give rise to any significant effects in respect of daytime noise. Overall, the 57dB  $L_{Aeq,16h}$  contour area would be 17% smaller than the actual contour in 2018 and 20% smaller than the permitted contour under the CADP1 Permission.

#### *Night-time noise*

209. With regards to night-time noise, the number of people exposed with the Proposed Amendments is higher in the DC scenario than the DM scenario in 2025 and 2027, but broadly similar in 2031<sup>346</sup>. It should be noted, however, that no receptors will be above the SOAEL threshold in 2025 and 2027 and only 70 receptors in Camel Road will be above the SOAEL threshold in 2031; however these people have already been treated by the Airport's sound insulation scheme, thereby avoiding any significant effect.<sup>347</sup> Mr Greer concludes that overall, night-time noise exposure levels are predicted to remain similar between the DM and DC Scenarios in 2031, with a slight decrease in the total number of those people adversely affected by air noise. This is because while aircraft movements are higher under the 2031 DC Scenario, this is offset by the predicted additional modernisation of the aircraft fleet.<sup>348</sup>
210. As noted above, there is no dispute with LBN that on the basis of the primary metrics, the Proposed Amendments would not give rise to any significant effects in respect of night-time noise.<sup>349</sup>

#### *Weekend noise*

211. With regards to weekend noise (based on the supplementary metric) there is an increase in

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<sup>346</sup> ES Table 8-27 (**CD1.15**)

<sup>347</sup> Richard Greer, Proof, para 7.3.5.

<sup>348</sup> Richard Greer, Proof, para 7.3.27.

<sup>349</sup> The Environmental Statement also demonstrates that the number of people highly sleep disturbed would be reduced with the Proposed Amendments, because of the higher proportion of quieter new generation aircraft, even without taking noise insulation into account. Once noise insulation is taken into account, Mr Thornely-Taylor agrees that significant adverse effects are avoided; paras 8.6.70 and 8.6.71 (**CD1.15**); Rupert Thornely-Taylor, Proof, para 4.10.5).

the number of people exposed as a result of additional aircraft movements on Saturdays.<sup>350</sup> All changes are between 0.1 and 1.9 dB and are therefore negligible.<sup>351</sup> Compared to the 'do minimum' scenario, there are the same number of residential healthcare buildings exposed to noise levels equal to or above the threshold level of 52 dB  $L_{Aeq,16hr}$  and 18 more outdoor amenity areas exposed to noise levels equal to or above the threshold level of 55 dB  $L_{Aeq,16hr}$ .<sup>352</sup> All of the changes in noise at these receptors are less than 3 dB, therefore the effects are rated as not significant. The noise levels on Saturday afternoons will remain lower than Saturday mornings, which are in turn lower than weekdays.<sup>353</sup>

#### *Sensitivity tests*

212. The sensitivity tests based on the slower or faster growth scenarios demonstrate that air noise effects would not be materially different to the core case. The greatest change is 0.1 dB, which is a negligible difference.<sup>354</sup>
213. Both the alternative fleet mix and proposed early morning limit sensitivity scenarios demonstrate that the effects would not be materially different to the core case (a maximum change of 0.1dB and 0.2dB respectively).<sup>355</sup>
214. The sensitivity analysis using a magnitude of change of 1 dB above the SOAEL indicates that there are no receptors above the SOAEL that experience a change of 1 dB or more for summer average daytime noise. Using a 1 dB magnitude does not result in any change to the outcome of the assessment in the Environmental Statement in respect of night-time noise. With regards to weekend noise, the assessment of which is itself a supplementary metric, 2,650 people would experience increases between 1 dB and 2 dB above the weekend SOAEL.<sup>356</sup> As explained by Mr Greer, this effect remains not significant in EIA terms, or in policy terms, as existing properties would benefit from the enhanced Sound Insulation Scheme that would avoid significant effects inside dwellings.<sup>357</sup>

#### *Conclusion*

215. As a result of the Proposed Amendments, there will be a reduction in the 57 dB average

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<sup>350</sup> Richard Greer, Proof, Table 7.16, page 54.

<sup>351</sup> Richard Greer, Proof, Table 7.16, page 54.

<sup>352</sup> Richard Greer, Proof, para 7.3.30.

<sup>353</sup> Richard Greer, Proof, para 3.3.1.

<sup>354</sup> Richard Greer, Proof, para 8.1.2.

<sup>355</sup> Richard Greer, Proof, sections 8.2 and 8.3.

<sup>356</sup> Richard Greer, Proof, para 11.3.20.

<sup>357</sup> Richard Greer, Proof, para 11.3.20. Accepted by Rupert Thornely-Taylor, Proof, para 4.10.5.

summer daytime noise contour area by the time the Airport reaches 9 mppa. This represents a 17% reduction when compared with the 2019 baseline and a 20% reduction compared with the current contour area cap secured by the CADP1 permission.<sup>358</sup>

216. This is clearly consistent with the ‘limit and where possible reduce’ policy in the APF, as clarified in the OANPS. Indeed, with regards to the need identified in the OANPS to look at the “total” noise effects, it is clear that overall, the noise effects will actually be reduced as a result of the Proposed Amendments.<sup>359</sup> This is driven by allowing new slots on Saturday afternoons, but the limitation of those new slots to new generation aircraft, which results in an accelerated process of re-fleeting. Indeed, this is a matter that is agreed with both LBN<sup>360</sup> and HACAN East.<sup>361</sup>

#### **Embedded mitigation and compensation**

217. There is now no dispute with either LBN or HACAN East that the proposed mitigation meets the policy requirements of the NPSE.
218. As set out above, the Airport already has a comprehensive package of mitigation and compensation measures secured through planning conditions and the section 106 agreement in respect of the CADP1 Permission. These will be enhanced as part of the Proposed Amendments, as follows:<sup>362</sup>
- a. The commitment for only cleaner, quieter ‘new generation’ aircraft to be permitted to fly in any extended hours and additional slots;
  - b. A significantly enhanced sound insulation scheme to further mitigate the impact of aircraft noise on neighbouring communities. This will feature a wider scope, including a lower noise threshold for eligibility in one of the categories of the Scheme, and a simplification of the process for obtaining works to enhance take up; and
  - c. An improved community fund, to target investment in public spaces and the community more generally close to the Airport and overflown by aircraft.

219. Whilst the Proposed Amendments would permit operations on a Saturday afternoon, the

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<sup>358</sup> Condition 33 (CD2.7).

<sup>359</sup> Sean Bashforth, EiC (Day 11).

<sup>360</sup> LBN does not object to the overall noise effects of the Proposed Amendments. This was confirmed by Mr Thornely-Taylor in XX (Day 7).

<sup>361</sup> This was accepted by Jake Farmer in XX (Day 10).

<sup>362</sup> Sean Bashforth, Proof, paras 8.10 – 8.17.

Proposed Amendments would retain an 18/17-hour closure from 1830/1930 on Saturdays until 1230 on Sundays.<sup>363</sup> Due to the retention of a cap on the maximum number of movements, the number of flights on Saturdays will continue to be significantly less than the permitted flights on weekdays.<sup>364</sup>

### **Outstanding issues in dispute**

220. The only outstanding points in dispute with LBN relates to the significance of introducing flights on Saturday afternoons and the impact of such operations on amenity. In this regard, the dispute is not a ‘technical’ one, but a matter of approach. Mr Thornely-Taylor’s position was clear; this is a “*rare occasion*” on which he was unable to provide assistance as to the significance of a development from a noise perspective. The approach he urged upon the Secretary of State was to take a “*value judgment*” as to the significance of the loss of the curfew on Saturday afternoons. This approach is addressed below.
221. HACAN East also seeks to demonstrate that the impact of the Saturday afternoon operations will be significant in terms of amenity. In addition to this, there are three other outstanding points in dispute with HACAN East:
- a. The use of the citizen survey study;
  - b. The significance of noise effects outside the contour; and
  - c. Whether the results of the citizen survey study cast doubt on the correctness of the noise contours presented in the Environmental Statement.
222. These are addressed in turn.

### **Summary of the Airport’s case on outstanding issues in dispute**

#### Approach to significance

223. As set out above, there is now nothing between LBN and the Airport about the ‘technical’ noise effects. The Environmental Statement demonstrates that the Proposed Amendments would not give rise to significant effects from noise, either during the day, at night or (on the basis of both the conventional and supplementary metrics) at the weekend. Notwithstanding

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<sup>363</sup> There is an additional hour of operations in the ‘summer season’ (defined as British Summer Time), during which, as part of the Proposed Amendments, it is proposed that the Airport will be allowed up to 12 additional arrivals between 1830 and 1930 on Saturdays. Sean Bashforth, Proof, para 4.2.

<sup>364</sup> Sean Bashforth, Proof, para 5.6. 230 compared with 592 for a weekday.

LBN's acceptance of the approach in its Scoping Opinion, LBN no longer considers that the weekend metric can be used to inform decision making.

224. Even if the weekend metric were to be set aside, however, there is no technical evidence that is capable of supporting a conclusion that the Proposed Amendments would give rise to a significant noise effect. It is because of this that LBN is forced to invite the Secretary of State to reach a "*value judgment*" as to the significance of Saturday afternoon operations. In other words, to depart from the conclusions of the Environmental Statement in order to conclude that there would be a significant effect, notwithstanding that there is no technical evidence to support such a conclusion.
225. The Airport acknowledges the concerns of residents that have been raised. Indeed, it was because of residents' concerns that the Airport scaled back its plans for Saturday operations in order to protect Saturday evenings<sup>365</sup>. The Airport accepts that it is plainly the case that noise from these operations will be heard by those within the noise contours, and even those outside the noise contours. However, the central plank of Government policy is the balance between the economic and consumer benefits of aviation and its social and health implications.<sup>366</sup> The OANPS makes clear that the way in which this is achieved is by requiring the mitigation of noise effects "*as much as practicable and realistic to do so*" in order to "*limit*" and "*where possible reduce*" the "*total adverse impacts on health and quality of life*".<sup>367</sup> The use of the words 'health and quality of life' is important and is clearly a reference to the approach in the NPSE that relates directly to those issues. Furthermore, Government policy recognises that even where there is an increase in adverse effects, these can be offset by socio-economic and consumer benefits. London Plan policy too recognises the need to avoid placing unreasonable restrictions on noise generating uses.<sup>368</sup>
226. In this instance, there is no dispute that the "*total*" noise effects will be reduced by the Proposed Amendments. In real terms, this is a benefit for those living within the noise contours. But this benefit can only be achieved if the conditions are created in which it is viable and attractive for airlines to re-fleet to new generation quieter aircraft, which have greater seating capacity (amongst other benefits). As explained by Ms Congdon, Saturday afternoon operations are vital for enabling airlines to use their aircraft efficiently. Without the Saturday afternoon slots, the incentive to re-fleet created by condition 89 would not exist.

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<sup>365</sup> This is in accordance with the PPG at para 10 (CD3.7.7).

<sup>366</sup> OANPS (CD3.7.3).

<sup>367</sup> Pdf page 3 (CD3.7.3).

<sup>368</sup> Policy D13, London Plan (CD3.3.1).

In reality, therefore, the reduction in the curfew facilitates a reduction in the 'total' noise effects.

227. Nor is there any dispute that the Airport's proposals comply with national policy requirements in terms of mitigation. This is not a case where any party has identified additional mitigation that could be provided. LBN's case is simply that there is no means of mitigating the effects of operations on Saturday afternoons.
228. As explained further below in respect of the planning balance, the Airport considers that the conclusion of the assessment in the Environmental Statement and the agreed compliance with national noise policy in respect of mitigation means that the Proposed Amendments are in compliance with development plan policy. To the extent that any impact on amenity arises, it is capable of being outweighed both by the beneficial noise effects and the substantial socio-economic benefits of the Proposed Amendments.

#### Impact on amenity

229. With regards to the impact on amenity, there will typically be around 80 aircraft movements on a Saturday afternoon or around six aircraft 'noise events' an hour at receptor locations, equating to roughly one every ten minutes.<sup>369</sup> Even then, the full extent of additional flights will not be experienced at each receptor location because many of the people affected by aircraft noise from the Airport are only overflowed by either westerly or easterly operations, not both.<sup>370</sup> Saturday afternoon aircraft noise is expected to remain on average quieter than a Saturday morning, which is in turn quieter than a weekday.<sup>371</sup> This means that the existing sound insulation scheme, which already successfully mitigates aircraft noise for residents' internal environments, will also be effective for the additional opening hours on Saturday afternoon.<sup>372</sup> Certain non-residential buildings, such as those used for education, are not generally used on a Saturday afternoon.<sup>373</sup>
230. Where there is increased use of outdoor space on a Saturday afternoon, for example outdoor social gathering and recreational sport, these activities are likely to be also taking place on Saturday morning and any disturbance would be additional rather than new.<sup>374</sup>

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<sup>369</sup> Sean Bashforth, Proof, para 4.5.

<sup>370</sup> Sean Bashforth, Proof, para 4.5.

<sup>371</sup> Sean Bashforth, Proof, para 6.3.

<sup>372</sup> Sean Bashforth, Proof, para 6.15.2. New eligibility criteria will be introduced for the Intermediate Tier Scheme based on weekend noise exposure.

<sup>373</sup> Sean Bashforth, Proof, para 6.15.4.

<sup>374</sup> Sean Bashforth, Proof, para 6.15.3.



Notwithstanding this, the new Community Fund will provide the opportunity for further investment in outdoor amenity areas and in the local community more widely.<sup>375</sup>

231. In practical terms, the noise effects generated from Saturday afternoon operations are not new noise generating development and have co-existed with existing and new communities in the Royal Docks and the wider area for over 30 years.<sup>376</sup> Whilst it is recognised, therefore, that the Proposed Amendments are technically a form of ‘development, they are not, in reality, the introduction of a new noise and nuisance generating development (an airport)<sup>377</sup>, as that development has existed for many years. Indeed, it is notable that large numbers of new dwellings have been constructed close to what is an existing international airport in the full knowledge of its existence and its long-standing aspirations for growth and, where appropriate, have been constructed with enhanced noise insulation to mitigate any impacts from aircraft noise<sup>378</sup>. The Airport’s sound insulation scheme has been in operation for many years and is available to those likely to be significantly adversely affected by aircraft noise but who do not already have effective mitigation in place.<sup>379</sup>
232. Overall, the Proposed Amendments will help to reduce noise levels at the Airport compared to the 2019 baseline as a result of accelerating the rate of re-fleeting.

#### Noise effects below the LOAEL

233. The Airport’s Environmental Statement indicates that new generation aircraft are between 2 and 3.2 dBA quieter than their old generation equivalents on arrival, and between 4 and 5.4 dBA on departure.<sup>380</sup> These are based on measured noise data.
234. The primary argument advanced by HACAN East in respect of the citizen science study (‘CSS’) is that it demonstrates that those outside the LOAEL contour will not benefit from the ‘quieter’ effects of new generation aircraft.<sup>381</sup> There are two points to be made in response to this.
235. First, the results from the CSS are from locations substantially outside the LOAEL. It is the LOAEL (i.e. the Lowest Observed Adverse Effect Level) that is identified by Government as “... *the level above which adverse effects on health and quality of life can be detected*”.<sup>382</sup> The

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<sup>375</sup> Sean Bashforth, Proof, para 6.15.3.

<sup>376</sup> Sean Bashforth, Proof, para 6.6.

<sup>377</sup> Sean Bashforth, Proof, para 6.6. Richard Greer, Proof, para 11.5.4.

<sup>378</sup> Sean Bashforth, Proof, para 2.25.

<sup>379</sup> Sean Bashforth, Proof, para 6.6. Richard Greer, Proof, paras 6.4.1 – 6.4.3.

<sup>380</sup> Table 8-7 (CD1.15).

<sup>381</sup> Christian Nold, Proof, para 3.3.

<sup>382</sup> CD3.7.2 para 2.20.

noise performance improvements relied upon are of primary relevance to those within the LOAEL contour, where Government policy requires that adverse effects are mitigated and minimised<sup>383</sup>. It is for this reason that noise levels further from the Airport are not calculated as part of the noise assessment. Whilst it is perfectly proper to take into account noise effects occurring outside the LOAEL, the assessment of effects does need to be undertaken within the context of Government policy and, in particular, the NPSE.<sup>384</sup>

236. As explained by Mr Thornely-Taylor, it is not surprising that close to the Airport, the noise benefits of the new generation aircraft will be more significant. He explains as follows:<sup>385</sup>

*“Close to the airport, figures produced by the appellants’ consultants are not likely to be materially inaccurate, but further away where aircraft thrust settings are low and airframe aerodynamic noise predominates the difference between the two groups of aircraft will be smaller. Although aircraft noise associated with LCY results in representations from residents in locations many miles from the airport, the noise index values are not computed at such distances and significant effects in the context of formal environmental assessment do not arise.”*

237. The fact that the benefits of new generation aircraft are more significant within the contours than outside the LOAEL contour does not, therefore, have any bearing on the noise effects that Government policy requires decision-makers to have regard to.

238. Second, and in any event, the results from the CSS are themselves inherently unreliable. As explained by Mr Greer, Figure 3 shows measured noise levels across six sites.<sup>386</sup> All of those sites are beneath the ‘level’ section of aircraft descent,<sup>387</sup> such that the results of the measurements should be the same.<sup>388</sup> However the results show a 13dB variation, indicating that it is unreliable for the purposes of drawing out a 1.7dB change between different aircraft types.<sup>389</sup>

239. There is therefore no dispute that the benefits of new generation aircraft are more significant within the LOAEL contour. That is the area in which the noise benefits are relevant to decision

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<sup>383</sup> **CD3.7.3** para 2.23

<sup>384</sup> Rupert Thornely-Taylor, Proof, para 4.10.5.

<sup>385</sup> Rupert Thornely-Taylor, Proof, para 6.3.7.

<sup>386</sup> Christian Nold, Proof, Figure 3.

<sup>387</sup> Christian Nold, Proof, para 2.17.

<sup>388</sup> Richard Greer, EiC (Day 9).

<sup>389</sup> Richard Greer, EiC (Day 9). As explained by Mr Greer, the fact that the results of the assessment carried out by BAP on behalf of the Airport and those from the CSS are similar is merely a coincidence.

making in policy terms. This is not to say that the Airport does not want to better understand the performance of new generation aircraft during overflight further from the Airport, but simply that it does not weigh against the Proposed Developments. Indeed, the Airport has already carried out monitoring between July and October 2023 in order to understand the difference in performance of the new aircraft types. As explained by Mr Greer, the Airport hopes to repeat this survey in order to gain a greater understanding of these effects.<sup>390</sup>

#### Implications of the CSS for the noise contours

240. During the course of the Inquiry, HACAN East sought to argue that the output of the CSS raises doubts as to the correctness of the Airport's noise modelling. In particular, it was suggested that the LOAEL contour may in fact be considerably larger than modelled.
241. As explained above, the locations from which data was collected as part of the CSS are significantly outside the LOAEL contour.<sup>391</sup> The LOAEL contour is wholly within the final stages of arrivals and the primary climb out, as these are the noisiest activities.<sup>392</sup> The noise data that is used in the Environmental Statement in respect of these stages is robust, as it is based upon the Airport's long term noise monitoring, which is operated in accordance with the aircraft noise categorisation scheme.<sup>393</sup> This is subject to ongoing review by LBN and reported in the Airport's annual performance review.<sup>394</sup>
242. HACAN East's point, developed in cross-examination of Mr Greer, that there is no noise monitoring of the 51 dB and 54 dB contours, misses the point. As Mr Greer explained, the contours are developed using the noise characteristics of each aircraft at source, the attenuation of noise with distance (i.e. the height of the aircraft above the receptor), and then verified by noise monitoring at appropriate locations.<sup>395</sup> This is a well-recognised approach to air noise modelling at all airports<sup>396</sup> and does not require noise monitoring at each and every location and/or contour line.
243. The measurements collected from locations under level flight as part of the CSS therefore have no bearing on the modelling that underpins the size of the contours.

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<sup>390</sup> Richard Greer, EiC (Day 9).

<sup>391</sup> Richard Greer, EiC (Day 9).

<sup>392</sup> Richard Greer, EiC (Day 9).

<sup>393</sup> Richard Greer, EiC (Day 9).

<sup>394</sup> Richard Greer, EiC (Day 9).

<sup>395</sup> Richard Green, Re-X (Day 9).

<sup>396</sup> The modelling meets the CAA's requirements. See Richard Greer, Proof, para 12.1.23.

## **Conclusion on noise**

244. The Proposed Amendments will introduce flights on a Saturday afternoon when there are currently none. However, there is no dispute that on the basis of conventional noise indices that this will not give rise to a significant adverse effect. Moreover, the introduction of Saturday afternoon is “*crucial*”<sup>397</sup> to delivering the overall noise improvements from new generation aircraft throughout the week. In OANPS terms, there is no dispute that the ‘total’ noise effects are reduced as a result of the Proposed Amendments.
245. Coupled with the overall reduction in noise levels, the package of mitigation measures that are currently in place in respect of noise will be enhanced as part of the Proposed Amendments. In particular, the extension to the Intermediate Tier Scheme through a new weekend noise eligibility criteria goes well beyond the SOAEL, and therefore will provide a real noise benefit for many thousands people throughout the whole week.<sup>398</sup>

## **OTHER MATTERS**

### **Introduction**

246. The Airport has produced a range of technical notes on matters that are not the subject of reasons for refusal, which are appended to the Proof of Evidence of Sean Bashforth and summarised in his Proof.<sup>399</sup> These include technical notes on the topics of carbon and climate change, air quality, health and transport. Much of the detail in these notes is not in dispute. In particular, no party has raised an objection to the Proposed Amendments on the basis of transport or air quality, such that these closing submissions contain no further discussion of these topics. HACAN East has raised points on both climate change and population health. The Airport’s position on these matters are therefore summarised briefly.

### **Carbon and climate change**

#### Scope of dispute

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<sup>397</sup> Sean Bashforth, EiC (Day 11).

<sup>398</sup> It is clear therefore, in the context of the legal duty in *Satnam Millennium Ltd v SSHCLG* [2019] EWHC 2631 that the Airport has discharged any evidential burden of showing that there is an overall improvement in the noise climate with the Proposed Amendments and that it has appropriately mitigated any residual effects in accordance with the NPSE.

<sup>399</sup> Sean Bashforth, Proof, Appendices 1, 2, 3 and 4.

247. The impact of the Proposed Amendments in terms of carbon emissions and climate change is not a reason for refusal. The scope of the points raised by HACAN East in respect of carbon and climate change are narrow. In particular:

- a. There is no dispute as to the assessment of carbon emissions set out in the Environmental Statement;<sup>400</sup>
- b. Notwithstanding the position set out in HACAN East's Statement of Case, there is now no dispute that the Proposed Amendments do accord with national policy in respect of climate change, including the Jet Zero Strategy;<sup>401</sup> and
- c. Unless the Secretary of State interprets policy T8 of the London Plan as having been modified by the Mayor's non-statutory document 'London Net Zero 2030: An Updated Pathway'<sup>402</sup> it is common ground that the Proposed Amendments comply with that policy insofar as it relates to carbon and climate change.

#### The Airport's assessment

248. Chapter 11 of the Environmental Statement<sup>403</sup> provides an assessment of the carbon emissions that would result from the Proposed Amendments and the significance of those emissions. The Environmental Statement separately assesses aviation emissions on the one hand, and non-aviation emissions arising from Airport activities, on the other. The outputs of this assessment are summarised in section 3 of the Carbon and Climate Change topic paper.<sup>404</sup>

249. With regards to aviation emissions, the ES uses five tests of significance. These involve comparing the carbon emissions that would be generated by the Proposed Amendments with (i) the 'planning assumption' (37.5Mt CO<sub>2</sub>) that was taken into account when setting the Fourth and Fifth Carbon Budgets; (ii) the Sixth Carbon Budget; (iii) the DfT Jet Zero Strategy's 'high ambition' in sector trajectory; (iv) national policy to reduce aviation emissions to net zero by 2050; and (v) considering whether the increase in carbon emissions is so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets, including carbon budgets. The last of these is the test noted in paragraph 5.82 of the

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<sup>400</sup> Jake Farmer, Proof, para 5.9.

<sup>401</sup> Jake Farmer, EIC (Day 10). Mr Farmer was asked whether he was saying that the proposal does or does not comply with the Jet Zero Strategy, to which he responded: "*I'm saying that it is compliant*". Dr Lane also confirmed that Mr Farmer was "*not saying that this proposal does not comply with national policy*".

<sup>402</sup> **CD3.9.6.**

<sup>403</sup> **CD1.18.**

<sup>404</sup> Sean Bashforth, Proof, Appendix 2.

ANPS.<sup>405</sup>

250. This approach to assessing significance has been endorsed by the High Court in the context of the expansion of Bristol Airport<sup>406</sup> and Southampton Airport.<sup>407</sup> In both cases, the Court endorsed the approach of comparing the projected carbon emissions to the Government's carbon budgets and considering the impact of the development on the ability of the Government to meet its climate change targets.<sup>408</sup>
251. The conclusion reached in Chapter 11 of the ES<sup>409</sup> in respect of aviation emissions is that the change in carbon emissions that would be generated by the Proposed Amendments (as compared to the 'do minimum' scenario) would constitute a very small proportion of the 'planning assumption' (0.04% more than the 'do minimum' scenario during the 4th carbon budget and 0.14% more than the 'do minimum' scenario during the 5th carbon budget) and the Sixth Carbon Budget (0.03% more than the 'do minimum' scenario). The emissions generated would be consistent with the Jet Zero Strategy in-sector trajectory and the Jet Zero Strategy to reduce aviation emissions to net zero by 2050. In particular, the Jet Zero Strategy was based on the assumption of a number of airports expanding capacity, including London City Airport expanding to 11mppa by 2030. Based on these assessments, the increase in carbon emissions associated with the Proposed Amendments would not have a material impact on the ability of Government to meet its carbon reduction targets, including carbon budgets.
252. In reaching these conclusions, regard has been had to the controls on aviation emissions that are imposed at a national level.<sup>410</sup> In particular, 99% of the aviation emissions (arising from 98% of flights) in the development case would be within the UK Emissions Trading Scheme, such that they would be subject to an overall cap on emissions that could not be exceeded. The remaining 1% of emissions in the development case would be within CORSIA, the global scheme adopted by ICAO pursuant to which emissions from flights outside the UK ETS are offset. It is also relevant that the Government retains the ability to introduce additional measures in order to control aviation emissions should they be needed and is under a legal duty to ensure that the net zero carbon target and carbon budgets in the Climate Change Act

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<sup>405</sup> **CD3.5.2.**

<sup>406</sup> **CD8.8.**

<sup>407</sup> **CD8.10.**

<sup>408</sup> See paragraphs 114 - 115 of the Bristol Airport judgment (**CD8.8**) and paragraphs 122 - 123 of the Southampton Airport judgment (**CD8.10**).

<sup>409</sup> **CD1.18.**

<sup>410</sup> As recognised in MBU, paras 1.11 and 1.19 (**CD3.5.03**).

2008 is met.

253. With regards non-aviation carbon emissions, the Proposed Amendments would make no difference to Scope 1 and 2 emissions, when comparing the emissions generated by the Proposed Amendments with the 'do minimum' scenario.<sup>411</sup> These emissions are subject to measures set out in the Airport's carbon and climate change action plan ('CCCAP') to achieve net zero emissions by 2030, which also seeks to manage scope 3 emissions insofar as it is able to.

Outstanding matter in dispute

254. The only outstanding point of dispute is the status and effect of the Mayor's 2030 net zero target. In particular, as a matter of interpretation, whether the publication of this target has amended policy T8. This matter is addressed below.

Policy T8 and the Mayor's 2030 target

255. HACAN East's position is that the difference between this appeal and previous airport inquiries is the relevant policy context. In particular, policy T8 of the London Plan specifically addresses the carbon emissions from aviation, in contrast to the development plan policies at issue elsewhere. Mr Farmer made clear that insofar as policy T8 is construed in line with the 2050 net zero target set out in policy GG6 of the London Plan and consistently with section 1 of the Climate Change Act 2008, there would be compliance with that aspect of the policy. However, Mr Farmer's position is that the publication of the Mayor's 2030 target has the effect of amending the policies in the London Plan, as the supporting text refers to the Mayor's carbon reduction targets.<sup>412</sup>
256. The Airport's case is that the Mayor's 2030 target is non-statutory in nature and does not form part of adopted development plan policy. The nature of the document within which this target is contained is a paper for engagement that was, in any event, published prior to the Government's Jet Zero Strategy. The Jet Zero Strategy is clear in reiterating that carbon emissions from aviation are to be addressed at the national level. The Mayor's targets are plainly not capable of amending 'through the back door' adopted policy, which is itself

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<sup>411</sup> ES, Table 11-19 (CD1.18).

<sup>412</sup> Para 10.8.8 (CD3.3.1).

consistent with the statutory net zero target.<sup>413</sup>

257. To the extent that the non-statutory 2030 target is taken into account as a material consideration, in circumstances where Government policy is clear that emissions from national aviation are to be addressed at the national level, then very little if any weight can be attributed to the Mayor's target. As explained by Mr Bashforth, it is not an appropriate role for regional policy or guidance to be setting a carbon target for international aviation.<sup>414</sup> In particular, the tests of significance used in the Environmental Statement have been endorsed by the High Court. The introduction of a non-statutory target plainly cannot render 'significant' in EIA terms effects that have been found to be 'not significant' in the Environmental Statement.<sup>415</sup>

### **Population Health**

258. It is a matter of common ground with LBN that the Proposed Amendments do not give rise to any significant adverse population health effects.
259. Chapter 12 of the ES<sup>416</sup> provides an assessment of the effects of the Proposed Amendments in terms of population health. The outputs of this assessment are summarised in section 5 of the Public Health and Wellbeing topic paper.<sup>417</sup> The assessment in the ES concludes that effects on residential amenity from noise generated by the Proposed Amendments are not significant from a population health perspective and the socio-economic beneficial effects of the Proposed Amendments are significant for population health.
260. The overall public health effect of the Proposed Amendments is driven by the significant benefits<sup>418</sup> to population health, including important employment and training opportunities for vulnerable groups, including local people with long-term unemployment, high job instability or low incomes.
261. HACAN East has produced evidence in order to demonstrate that the Proposed Amendments

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<sup>413</sup> *R (Cherkely Campaign) v Mole Valley DC* [2014] EWCA Civ 567, makes clear at [16] that supporting text is not itself a policy or part of a policy, and nor does it have the force of policy. Furthermore, as made clear in *New Dawn Homes v SSCLG* [2016] EWHC 3314 (Admin), it cannot impose a new or additional requirement outwith the policy and/or the Plan generally.

<sup>414</sup> Sean Bashforth, EiC (Day 11).

<sup>415</sup> Sean Bashforth, para 7.29.

<sup>416</sup> **CD1.19.**

<sup>417</sup> Sean Bashforth, Proof, Appendix 3.

<sup>418</sup> When weighed against the 'not significant' adverse effects from noise.



*“will impact on health”*.<sup>419</sup> It is readily apparent, however, that the report relied upon by HACAN East is based on an incomplete or erroneous understanding of the Proposed Amendments. In particular, the report identifies that the Airport relies *“solely”* on quieter aircraft as mitigation, rather than noise insulation as is usually relied upon in order to comply with the NPSE.<sup>420</sup> In these circumstances, no weight can be given to the report in terms of assessing the effects of the Proposed Amendments on population health.

## **PLANNING POLICY AND PLANNING MATTERS**

### **Introduction**

262. The Airport’s assessment of the overall planning balance depends upon the evidence on forecasting, socio-economics and noise, as summarised above, in addition to the assessment of those matters that are not identified as reasons for refusal. It is not the purpose of this section to repeat the analysis of the evidence set out above, but to draw on that analysis in the context of the legal and policy framework for the planning balance.

### **Scope of dispute at the close of evidence**

263. There is no dispute that the Proposed Amendments comply with a wide range of development plan policies, including those relating to surface access, air quality, the delivery of employment, skills and socio-economic benefits, and energy. In particular, the Proposed Amendments would deliver substantial economic benefits, both in the local study area where there are high levels of deprivation, and on a London wide level. This accords with development plan policy supporting the delivery of employment and economic growth in the Riverside and Beckton Opportunity Area in particular. The extent to which there is agreed compliance with these policies is relevant to determining whether it is in compliance with the development plan taken as a whole.
264. The policies referred to in the reason for refusal are policies D13 and T8 of the London Plan and policies SP2 and SP8 of the Local Plan. These are addressed in turn below.

### **Legal and policy framework**

265. The effect of section 38(6) of the Planning and Compulsory Purchase Act 2004 is that the

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<sup>419</sup> Jake Farmer, Proof, Apx 1, para 10.

<sup>420</sup> Jake Farmer, Proof, Apx 1, para 9.

application for the Proposed Amendments must be determined in accordance with the development plan unless material considerations indicate otherwise. It is now well established that “... *the duty can only be properly performed if the decision-maker, in the course of making the decision, establishes whether or not the proposal accords with the development plan as a whole.*” (emphasis added): *BDW Trading Ltd (t/a David Wilson Homes (Central, Mercia and West Midlands)) v Secretary of State* [2015] EWHC 886 at [21].

#### Policy T8

266. The only parts of policy T8 that are in dispute are parts B and E.<sup>421</sup> It is agreed that the Proposed Amendments comply with parts A and F, which support the role of airports serving London in enhancing the city's spatial growth and making better use of existing airport capacity.<sup>422</sup> There is no dispute that there is no breach of parts C and G, which relate to surface access. Parts C, H and I do not apply to the Proposed Amendments.<sup>423</sup>
267. With regards to part B, the environmental and health impacts of the Proposed Amendments have been fully acknowledged and appropriate mitigation has been provided.<sup>424</sup> The ES provides a full account of the likely significant environmental impacts using standard noise metrics and supplementary metrics. The Environmental Statement concludes that all changes in daytime and weekend air noise levels are forecast to be negligible and therefore not significant in EIA terms. The Proposed Amendments will result in night-time noise increases for a limited number of properties above the SOAEL, but these properties are already within the Airport's sound insulation scheme.<sup>425</sup> There is no dispute that the reference to mitigating environmental effects corresponds to the requirements in the NPSE insofar as it relates to noise. There is also no dispute that the Proposed Amendments comply with the NPSE,<sup>426</sup> such that there is also compliance with this part of policy T8.
268. With regards to the reference to demonstrating overriding public interest “*if required*”, the meaning of the policy is not entirely clear. The Airport's position is that there is no such requirement in the present case, as the Proposed Amendments will not give rise to significant adverse environmental effects. Even if there was such a ‘requirement’, however, there is

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<sup>421</sup> Pdf page 453 (CD3.3.1).

<sup>422</sup> Liam McFadden, XX (Day 10).

<sup>423</sup> There was some debate as to the applicability of part H, which relates to “*general and business aviation*”. This term is defined in Annex 2 of the London Plan (CD3.3.1). The proposal does not relate to such activity.

<sup>424</sup> As required by policy T8 of the London Plan.

<sup>425</sup> Sean Bashforth, Proof, para 9.3.1.

<sup>426</sup> Accepted by Rupert Thornely-Taylor, XX (Day 7). Jake Farmer, XX (Day 10).

clearly an ‘overriding public interest’ in granting planning permission for the Proposed Amendments as clear from the need for the Proposed Amendments, as supported by national aviation policy, the many socio-economic and consumer benefits and, indeed, overall noise benefits identified above.

269. With regards to part E, the Proposed Amendments have been shaped by consultation with stakeholders, including local residents, which is reflected in the Airport’s decision to limit the extended operating hours on Saturdays to the minimum necessary to achieve the objectives of meeting demand and incentivising re-fleeting. As explained by Mr Bashforth, the fact that there are objections to a proposed development does not itself render that development unacceptable.<sup>427</sup> It is necessary to consider the scope of those objections in the context of the assessment of effects.<sup>428</sup> Insofar as this part requires “*full account*” to be taken of environmental impacts, the Airport considers that this is met by the comprehensive assessment of effects in the Environmental Statement.

#### Policy D13

270. Policy D13 seeks to strike a balance between noise generating development and the amenity of those nearby. However, it also requires that development should be designed to ensure that established noise and other nuisance-generating uses remain viable and can continue or grow without “*unreasonable restrictions*” being placed on them.
271. The noise impacts of the Proposed Amendments will be managed and mitigated.<sup>429</sup> The significant enhancement to the scope and effectiveness of the Airport’s residential sound insulation scheme and will result in residents qualifying at a lower noise threshold in the intermediate tier and entitle more residents to receive the full cost for full treatment to their homes, undertaken by the Airport’s contractors.<sup>430</sup> As set out above, there is no dispute that the proposed mitigation complies with the NPSE.

#### Policies SP2 and SP8

272. Policies SP2 and SP8 of the Newham Local Plan<sup>431</sup> encourage the reduction in health inequalities and the creation of healthy neighbourhoods and developments. Part (a)(iii) of

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<sup>427</sup> Sean Bashforth, EiC (Day 11).

<sup>428</sup> Sean Bashforth, EiC (Day 11).

<sup>429</sup> In accordance with policy D13 of the London Plan (**CD3.3.01**).

<sup>430</sup> Sean Bashforth, Proof, para 9.3.2.

<sup>431</sup> **CD3.4.1.**

policy SP2 recognises the importance of improving employment and reducing poverty, whilst attending the environmental impacts of economic development, including noise. Policy SP8 requires development to achieve “*good neighbourliness*” by avoiding negative impacts (including unacceptable exposure to noise<sup>432</sup>) and maximising positive social, environmental and design impacts for neighbours.

273. The Proposed Amendments would deliver ‘neighbourly development’ by reducing the overall noise at the Airport, as a result of accelerating the process of re-fleeting, and avoiding any significant adverse effects.<sup>433</sup> Furthermore, the Proposed Amendments would result in a significant beneficial population health impact through the delivery of additional employment, which is recognised as a key part of ensuring healthy neighbourhoods.<sup>434</sup>

#### **Compliance with development plan policy**

274. Considering the above policies together, alongside those with which there is agreed to be compliance, the Proposed Amendments clearly accord with the development plan taken as a whole. The scale of the economic benefits, which are not disputed by LBN, and the national policy support for making best use of existing airport infrastructure, also weigh in favour of the grant of planning permission. There are, therefore, no material considerations indicating that the appeal should be determined other than in accordance with the development plan.
275. However, even if the Proposed Amendments did not accord with those policies identified in the reason for refusal, the Airport’s case is that any such conflict would be outweighed by other material considerations indicating that planning permission should be granted. In particular, and in addition to the benefits identified above:
276. The Proposed Amendments are consistent with up to date national aviation policy in MBU and Fttf, which supports the principle of growth through making the best use of existing infrastructure.
277. The Proposed Amendments incentivise airlines to accelerate their re-fleeting to newer aircraft with materially better environmental performance by only allowing new generation to be used in the additional Saturday operating period and early morning slots.
278. The Proposed Amendments share the noise benefits from fleet modernisation with the

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<sup>432</sup> Part (xi).

<sup>433</sup> In accordance with policy SP8 of the Local Plan (CD3.4.01).

<sup>434</sup> In accordance with policy SP2 of the Local Plan (CD3.4.01). Sean Bashforth, Proof, para 9.3.4.

community through the reduction of the 57dB  $L_{Aeq,16h}$  noise contour by 20% to 7.2km<sup>2</sup> and reducing overall aircraft noise throughout the week.

- 279. The Proposed Amendments provide commitments in the CCCAP and revised energy strategy to reduce Scope 1 and 2 emissions and to respond to the targets in the Jet Zero Strategy for airport operations.
- 280. The Proposed Amendments allow growth consistent with the Government's JZS trajectory and its carbon budgets and 2050 'net zero' target.
- 281. The Proposed Amendments commit to targets to achieve an 80% passenger sustainable transport mode share target (up from 75%) and other improvements backed up by a Sustainable Transport Fund to deliver infrastructure and other improvements.

## CONCLUSIONS

- 282. The scope of the objection to the Proposed Amendments is exceedingly narrow. By the close of the evidence, LBN's objection relates solely to the impacts on amenity arising from the operations on Saturday afternoons. There is no dispute that the 'technical' evidence indicates that these operations would have no significant noise effects. LBN invites the Secretary of State to depart from the conclusion in the Environmental Statement in order to reach a "*value judgment*" as to the significance of those effects.
- 283. The Airport's case rests principally on the assessment of those effects in the Environmental Statement. Any impacts on amenity arising from Saturday afternoons must be considered in the context of a reduction in total noise effects and the enhanced noise mitigation. The real noise benefits that the Proposed Amendments will deliver are inextricably linked to Saturday afternoon operations.
- 284. Standing back, the environmental effects of the Proposed Amendments are incredibly modest. These are to be weighed against the substantial socio-economic benefits that will be delivered. The Proposed Amendments represent an opportunity to make best use of the Airport's existing infrastructure, whilst delivering real world benefits for real people; opportunities for skills training, jobs, the chance to travel, increased economic activity in their local area, and further investment in the place that they live and work.
- 285. These benefits reflect key Government objectives for 'levelling up' areas of deprivation,

strengthening international connectivity and supporting the role of airports as engines of economic growth.

286. On balance, therefore, it is the Airport's case that this appeal should be allowed and planning permission granted for the Proposed Amendments.

**Michael Humphries KC**

**Daisy Noble**

Francis Taylor Building

2 February 2024