

I make this objection as chair of the Luton and District Association for the Control of Aircraft Noise on behalf of over 300 local members adversely affected by the environmental impacts of Luton Airport.

We have reviewed the additional information supplied pursuant to a Section 73 application to vary Condition 10 of application reference 15/00950/VARCON ("the Application") and we wish to sustain and indeed strengthen our objection to the Application in light of this additional information.

We provide comments here in relation to the numbered sections of:

a) the revised Environmental Statement entitled 'Variation of Condition 10 of Granted Planning Consent 15/0059/VARCON, Environmental Impact Assessment, Volume 2: Environmental Statement' ("the ES")

b) the revised Planning Statement entitled 'Variation of Condition 10 (Noise) pursuant to Planning Permission 15/00950/VARCON Planning Statement (Rev A)' ("the PS")

We refer, as does the ES, to the Applicant as being London Luton Airport ("LLA") and to Luton Borough Council as the Local Planning Authority ("the LPA").

We also refer to and take as read the following documents:

a) The objection letter dated 18th July 2019 from Derrick Ashley on behalf of Hertfordshire County Council ("the HCC objection").

b) The document "A11060.03 N05 Luton Airport Condition 10 Variation - Update Rev.A" provided by LLA's independent noise consultants Bickerdike Allen Partnership to the London Luton Airport Consultative Committee ("the BAP report").

c) The document entitled 'London Luton Airport Operations Limited Revised Masterplan document, Consultation prior to submission of planning application, London's local airport, September 2012' ("the LLAOL Masterplan") issued for consultation pursuant to planning application 12/01400/FUL for works to increase the capacity to 18 million passengers ("Project Curium")

d) The LLA 'Quarterly Monitoring Report Q2 2019' ("the QMR")

Section 5.7 ii of the PS seeks to justify the Application on grounds that it "contributes to achieving national aviation policies by allowing the airport to maximise the use of its existing runway with extremely limited harm in the form of relatively minor noise effect that is minimised and mitigated where possible."

In response we would firstly point out that the Application is not an application to allow the airport to maximise the use of its existing runway - which given its admission that the 18 million passenger limit will be reached in 2020 would require planning condition 8 limiting passenger numbers to be set aside. Instead, the Application purports (and in our view still fails) to justify permitting a breach of a key noise condition to continue because (as confirmed by the BAP report) LLA has failed to gear the rate of growth to the rate of mitigation.

LBC will be well aware that the thrust of national aviation policies requires balanced growth and mitigation, not growth without corresponding mitigation. This is clearly set out in the HCC objection. Nevertheless, LLA has failed to moderate its operation in accordance with the 'balanced approach' set out in the Aviation Policy Framework by exploring and where necessary implementing operating restrictions to control and mitigate noise.

The Application still does not provide transparent information about how many aircraft are being flown above what is permitted, so fails properly to acknowledge the scale and nature of the noise impact. However, the BAP report indicates that around 50 additional aircraft movements per 24-hour period are occurring over and above what is permitted. According to the QMR, 95% of these aircraft will have noisier engines: in fact the LPA will note that the QMR also shows that for each slightly quieter neo-engined aircraft introduced into the fleet, a noisier-engined A321 has also been introduced at the expense of quieter-engined A319s, thereby cancelling the effect since the noisiness - particularly at night - has continued to increase.

Each aircraft transit - particularly the departures which fail to achieve continuous climb and are sometimes held at 4,000ft for as much as 16 miles as far as Welwyn/Hatfield and therefore affect a very wide area and many thousands of people.

In light of this, it is incorrect of LLA to claim "extremely limited harm in the form of relatively minor noise effect" and indeed its apparent inability to appreciate, acknowledge and communicate the environmental impacts of its operation is in itself a reason why the Application should be rejected.

The LLAOL Masterplan refers three times to maximising the use of infrastructure, and the planning conditions were established to regulate Project Curium while seeking to achieve that, therefore LLA cannot now claim it wants to maximise the use of the runway as if that was somehow in addition to and separate from the progression of Project Curium - which by its own admission still has 8 years to run. The LPA will be aware that its own role includes the obligation to scrutinise sufficiently closely to ensure that LLA abides by the terms of the Section 73 agreement which it signed in respect of that project, rather than - as the HCC objection puts it - ignoring it and "betraying" local communities.

Section 5.7 iii of the PS claims that "the airport remains committed to delivering the five key targets in its latest Noise Action Plan 2019-2023 (Feb 2019), and the proposal to temporarily enlarge the noise contours does not prevent the airport from delivering these targets."

This is complete nonsense, since the Noise Action Plan explicitly commits to operating within the noise contours, and LLA has failed to do this. The Application therefore contravenes the Noise Action Plan, and the actions of LLA since 2014 to incentivise growth airlines and to permit faster growth than the upper-end forecast in the LLAOL Masterplan demonstrates clear disregard for the use of operating restrictions as part of its noise control measures. LLA is clearly not committed to delivering its own Noise Action Plan, has knowingly disregarded it, and (because breach occurred in 2017) has in fact submitted a Noise Action Plan document to Defra in 2019 knowing it to be false.

Section 5.7 iii of the PS also claims that "enabling existing aircraft to continue using the airport will bring significant economic benefits to the local economy, whereas the grounding of the aircraft will result in devastating economic losses."

This is a ludicrous statement. Firstly, if it were true, the envisaged scale of operation at this stage of development as set out in the LLAOL Masterplan would have been delivering devastating economic losses, whereas during the 12/01400/FUL planning consultation LLA and its advisers boasted of the significant economic benefits which Project Curium would bring. Secondly, because the breach is self-inflicted, LLA's failure to regulate its growth has caused the need for corrective action, so LLA should be required make good any alleged losses. The economic benefits of Project Curium were described as significant in the Oxford Economics report at the time. At no point was the need to double the upper end forecast growth rate highlighted as a necessary condition to achieve this economic benefit.

Any ordinary citizen obtaining permission to build a bungalow, then building a two-storey house, would get short shrift if they complained to the planning enforcement officer that they would be financially ruined by having to demolish it.

The fact is that 50 aircraft movements per day are being inflicted on local people without any legal justification, and this adds to the harm caused to their health and wellbeing (see referenced reports below), which in turn has a negative impact on the local economy.

The congestion and delays caused by the faster-than expected growth in surface transport load without, for example, the mitigation of DART, also have a negative impact on the local economy. There is simply no evidence that the original development trajectory would lead to devastating economic losses, nor that restraining the operation to its original course would do so. In fact, were the revenue windfall of non-permitted operation for 3 years be returned to the local economy by LLA as compensation, this would stimulate the local economy in broader ways and have a beneficial effect.

Section 5.7 iii of the PS also claims that "The benefits of the temporary and managed deviation would significantly outweigh the limited and mitigated temporary noise impact."

There is no effective mitigation being offered to offset the noise impact on the wider area. Noise insulation for those closest only reduces noise when people are indoors with the windows closed, and cannot be fitted without substantial delay, nor to listed buildings. People in the wider area being subject to 50 additional flights per 24 hours, each on average noisier than when Project Curium started according to the QMR fleet mix analysis, creating more-than-permitted noise (much of which occurs at night between 23:00 and 07:00) which can cause sleep disturbance and health problems. This does not constitute a benefit of any kind, nor a mitigation. And since LLA clearly could not manage the original growth rate it is hardly likely to be able to manage a "temporary deviation".

Section 5.7 iii of the PS goes on to claim that "The proposal does not technically accord with the Noise Action Plan and the Airport Masterplan, but material considerations strongly indicate that such temporary deviation is reasonably acceptable on balance."

The proposal is not (technically or otherwise) in accordance with the Noise Action Plan, nor the Airport Masterplan, nor the Luton Local Plan, nor the Aviation Policy Framework, and should be rejected and the airport penalised for disregarding planning requirements. No material overriding considerations have been provided. The LPA has a responsibility for enforcement as we set out below, and is also required to consider its responsibilities under its Enforcement Policy.

In Section 6 the PS claims that the proposal would have "no material impact on air quality and climate change."

This statement is fallacious and emphasises that LLA appears to have no concept of the contribution of aviation to climate change. By permitting more unmodernised aircraft with less fuel-efficient engines to be flown, it is contributing needlessly and beyond what it is legally permitted to contribute both to noise and to the emissions which cause climate change. By using operating constraints to eliminate these additional flights until significantly more of the fleet has been re-engined and noise has been reduced, climate change benefit would be delivered.

Section 6 the PS further claims that "The effect of essentially moving properties from one noise threshold to another, whilst accepting that the new threshold is significant, would in practice result in a 1 dB change in their day to day experience of noise."

The reference in this context to "a 1 dB change in their day to day experience of noise" is technically incorrect since the term "dB" is defined in the glossary as referring to sound pressure level, yet noise contours are an average taken over 8 hours (night) or 16 hours (day) and do not translate into something which a person can directly perceive. The change being proposed is an additional number of flights over what is permitted, each of which causes significant noise disturbance to those overflown, magnified by the fact that departures are often held low for extended distance and many arrivals occur very late at night or in the early morning.

Section 6 goes on to say that "Together with airline partners LLAOL enabled 136,511 flights in 2018, a significant increase from circa 70-75,000 flights in early 2010s. The story is similar to all the major London airports."

The story is certainly not similar to all the major London airports. Since 2012 Heathrow passenger numbers have increased by 14%, Gatwick by 35%, Stansted by 48%, but Luton by a very significant 74%. This is twice as fast as communities and other local authorities were led to expect in the LLAOL Masterplan upper-end forecast. The environmental impacts in terms of noise, pollution from aircraft and surface transport emissions (because Luton Airport still has low usage of public transport for access), and emissions causing climate change have all been significant and out of proportion to what was anticipated due to lack of regulation of growth. It is entirely unreasonable to expect permission to be granted to continue such unbalanced growth. LLA should first deliver the mitigation of sufficient quieter aircraft to bring the operation into line with all of its planning conditions, given the significant exceedance of the environmental impact since 2017.

The ES in 3.3.11 states that "In 2017 the night noise contour only was exceeded, this was largely due to late arriving aircraft that were scheduled to arrive in the daytime period."

The BAP report indicates otherwise and clearly states - as do LLA's Annual Monitoring Reports - that the breach was caused by the growth in numbers of flights, not by late-arriving aircraft. And since the revised application states the day and night contours are both likely to be breached, it can hardly be a problem of day noise shifting into night, otherwise the day noise contour would not also be threatened. The truth of the matter appears to be that the Application is a cynical self-serving move by LLA to create a noise-related planning environment in which its plan, now publicly acknowledged, to increase capacity to 19 million passengers - in breach of the 18 million limit - can be delivered. Otherwise there would have been no need to apply for such significant increase in the contours.

The ES claims in 1.2.5 that "Condition 10 was set based on noise modelling which only took into account the effects of modernisation in 2028, after the resident airlines were expected to have acquired all of the ordered NEO and MAX aircraft. Little or no headroom was provided and is outside of the control of the operator of LLA."; and "..the original assumptions have proven to be optimistic in terms of fleet modernisation and pessimistic in terms of demand. As such, the expected reduction in noise levels have not been forthcoming to the extent envisaged and it is taking longer to achieve the mandated noise levels."; and "In addition, ... the delay in the manufacturing of Airbus Neo aircraft due to Pratt and Whitney engines and the grounding of Boeing 737Max aircraft due to safety concerns has meant that there are lower numbers of new generation aircraft at LLA compared to the initial assumptions made as part of the 2028 forecast for 18 mppa."

All modelling and forecasting has an element of uncertainty, and the professionals who carried this out and carefully reviewed and assessed it at the time of application 12/01400/FUL would have known and made allowances for that, bearing in mind the very significant environmental impact being proposed. Some of the uncertainty has in fact offset the effect of Max delays: LLA's own Annual Monitoring Reports shows that Boeing A319/A320/A321 types in 2018 formed 64% of the fleet (2012 assumed only 53%) whilst B737 types in 2018 accounted for only 11% (2012 assumed 16%), so the dependence on Max will be less significant. But none of the flim-flam about modelling uncertainties can excuse the current breach: in 2012 it was stated that modernisation would not occur until after 2017, so delay in modernisation cannot be responsible for the breach of Condition 10 in 2017.

In 2.2.2 the ES claims that "All reasonable alternatives associated with the proposed variation to Condition 10 have been considered ... however this is limited to a 'do nothing' scenario ... (in which) the airport operates in line with the 2012 consented scheme."; and goes on in 2.2.3 "This would result in either an unacceptable economic impact resulting from restrictions that would be placed on operations, or repeated breaches of Condition 10. As such this is not considered to be a reasonable alternative."

It is clear from the above that LLA has not considered the reasonable alternative of complying with Condition 10, which it legally agreed to in order to secure permission for Project Curium. Instead, it has now redefined adhering to that condition as 'not a reasonable alternative'.

In accepting the financial incentivisation for rapid growth from the LPA's airport holding company LLAL, LLA perhaps assumed that the noise impact of speeded-up growth would just be forgiven by the LPA when the time came: otherwise it could have taken steps to avoid the breach by controlling its slot allocation.

The fact that LLA is unable to produce evidence of any analysis of the compliance scenario suggests that since 2016 when the likelihood of breach was first predicted, prudent operating constraints were not even considered or taken through a business modelling assessment. Had this been a safety issue for which breach would have meant loss of operating licence, things would no doubt have been different. As things stand, LLA has failed to set out any business options other than to drive forwards with its next expansion step to go to 19 million passengers, despite Planning Condition 8 which sets a limit of 18 million. This starkly demonstrates the imbalance in this operation: LLA is considering only commercial return, and not its responsibility to maintain a balance between mitigation and benefit, which means it is acting outside what is required not only by government policy but the legal agreement it signed up to in respect of the planning governance of the Airport.

In 7.2.1 the ES claims that "the 2012 ES took a conservative approach to modelling the noise contours which has since contributed to the identification of a breach to Condition 10. Given the inherent uncertainty in forecasting aircraft, the proposed variation to Condition 10 seeks permission for a contour slightly larger than required. This will ensure flexibility is provided to accommodate a reasonable level of uncertainty associated with forecasting."

This claim is unsubstantiated and appears to be a misrepresentation. The 2012 ES Technical Appendix H Noise Report does use the word 'conservative' in relation to considering the impact of expansion if no fleet modernisation were to take place, and gives a fair description of the expected rate of modernisation. Its noise contour Appendix N(3) takes great care to produce accurately calibrated forecasts, and does not mention the word 'conservative' once. And the inherent

uncertainty in contour calculations would have been known about in 2012 and factored in when the planning conditions were rigorously assessed and agreed.

In 7.4.3 the ES claims that "It is not anticipated that the frequency of events would increase to such a degree that there would be an effect on schools."

This again is an unsubstantiated claim about an important issue. The key difference which needs to be quantified is the number of illegal flights which schools under the flightpath experience currently and would have to endure on into the worst year, compared to the number of flights which are currently permitted by condition 10 to be flown with a largely unmodernised fleet. This number is not provided, which remains a key deficiency in the ES and means it still does not answer the request for clarification in the Regulation 25 letter (3.1.2 "...an evaluation of changes in the number and noise level of aircraft flyovers is an important aspect of the overall noise effect that should be assessed."). Surrey Street Primary School and Breachwood Green School are, for example, overflown and the health reports cited below highlight the detrimental effects of noise on learning and cognitive development.

In 7.12.1 the ES states that "One-off grants between £5,000 and £10,000 (to a maximum of £150,000) will be offered to local councils exposed to noise levels between LOAEL and SOAEL based on the forecast 2020 noise contours, for community improvements."

This commitment amounts to an offer of compensation for exceeding the noise contour, which equates to an admission of liability. Given that the contours have been breached for two years in a row and are likely to be breached this year, compensation should be payable in any case, without any obligation to set aside the condition in return.

In 7.13.1 the ES claims that "If LLA was to operate to the extent of the proposed variation to Condition 10, there would be an increase of 213 dwellings exposed to noise levels above SOAEL during the daytime and 470 dwellings during the night-time, a temporary significant adverse effect. It should be noted that the forecasted noise levels are below the assessed noise contour areas and therefore the effect is likely to be less than identified and for a shorter period of time (up to 2021)."

The Application does not justify why this significant adverse effect should continue to be inflicted to the detriment of residential amenity and in contravention of the very planning guidelines which the condition was created and legally agreed to enshrine. Neither does it provide any reason why the effect is likely to be for less time than originally specified (2024) nor how the impact of any more past 18 million passengers might affect the prediction. Salami-slicing is a well-known subterfuge for evading a restriction and should be rejected given the duration of breach and the scale of harm.

The more likely interpretation is that the Application is to facilitate LLA's determination to breach planning condition 8 and move to 19 million passengers, the screening report for which acknowledges there will be an increased number of (as yet unmodernised) aircraft movements during the busy period and an increased weight due to higher loading factors. All of this would further increase noise beyond what is currently permitted.

For all the above reasons, the Application should be rejected.

Turning now to the enforcement responsibilities of the LPA, we make the following points.

The LPA will be aware of its obligations under the Town and Country Planning Act 1990 (as amended) in respect of planning enforcement. Such duties, include:

- responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative areas
- acting in a proportionate way when tackling alleged breaches of planning control
- in considering any enforcement action, having regard to the National Planning Policy Framework, in particular paragraph 58, which states:

"Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate."

The LPA also has an adopted Enforcement Policy that provides details as to what the people, be that private individuals, businesses or residents, of the borough of Luton can expect when the Council are faced with a potential enforcement matter.

Government planning guidance further indicates that the provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are also relevant when considering enforcement action. This is also listed within the Council's Enforcement Policy.

There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.

Guidance also indicates that effective enforcement is important to:

- tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
- maintain the integrity of the decision-making process;
- help ensure that public acceptance of the decision-making process is maintained.

Local authorities are also guided that enforcement action should be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case. In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:

- there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
- development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;
- in their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.

In summary therefore, as the LPA will be aware, judging what is appropriate action in any particular case requires consideration of and finding a balance between:

- what is necessary in the public interest
- what is proportionate
- what maintains public confidence in the planning system and its decision-making integrity
- what the health, housing and welfare needs might be
- who is affected
- the severity of the breach and whether there is material harm or adverse impact on amenity
- whether the case is simply a matter of regularising the development

Dealing with each of these in turn:

1) What is necessary in the public interest?

Whilst Luton Airport serves the public interest and generates economic benefit, it does so at the price of its environmental impact. The planning application for Project Curium set out a range of commercial and employment benefits to the advantage of the airport, and nothing in the current application to vary condition 10 indicates that these would have been forfeit had the airport followed the original upper-end forecast trajectory for growth.

In fact, operating the Airport within the forecast trajectory would have saved both LLA and the LPA a great deal of time, money and resource since the need for the current application would not have arisen (ref the BAP report).

Equally, the cost and inconvenience of having to make arrangements to bring the operation back into line with the legally agreed planning conditions (well known to all parties since December 2013) would not have arisen - and certainly cannot be used as an argument to permit and forgive breach, as the supporting statements made by the airlines (submitted by LLA to support the justification of the Application) seek to do.

It is equally disingenuous and frankly ridiculous for LLA to claim that 'economic devastation' would result if the Application is not granted. As we have set out in our objections to the Application above, the current position has only arisen because LLA failed adequately to control the growth of the airport capacity so as to stay in balance with the mitigations it had legally agreed to. The planning documents for 12/01400/FUL clearly indicate that quieter-engined aircraft were not expected to be delivered until 2017 and that there was uncertainty about the pace of introduction.

Other options do exist - for example LLA has known for some time about plans to modernise airspace, which it has explained during the Focus Groups would enable continuous climb, and indeed it is in the public interest for LLA to be focused on doing all in its power to influence the industry to drive this forwards as a means of unlocking its further growth towards the permitted 18 million limit. There is still plenty of time to do so before 2028.

Similarly, the growth of the airport business in terms of numbers of flights and destinations was seen in the LLAOL Masterplan as perfectly adequate to provide the travelling public with a growing and vibrant airport without any need to meet those aspirations in a shorter timeframe. In fact, a balanced expansion would have led to a more gradual ramp-up in surface transport load, enabling

projects such as DART to have fitted into a situation of planned and controlled demand rather than accelerated demand.

LLA has not provided any reasonable or compelling evidence to demonstrate that the public interest, taking all things into consideration including the impacts on climate change of operating more than permitted number of (largely unmodernised) aircraft, is served by faster-than-permitted growth as opposed to the growth trajectory originally presented. In fact, given the well-known link between aviation and the growing need to take account of climate change and the commitment of the UK Government to reach carbon neutral by 2050 one would have expected a more enlightened application.

It is against the wider public interest for LLA to continue its present actions - not just because of the greater emissions from older or less efficient engines, but also the effects of contrails, all of which are well documented. The fact that the application states that granting the requested change would have no impact on climate change underlines that LLA has not considered what the application actually entails in practice - certainly it is not explained transparently in terms of additional numbers of movements, as had been requested in the Regulation 25 letter and accompanying report.

On balance we would argue that the public interest would have been better served by a more gradual expansion, avoiding the situation in which significant numbers of people and households are being (and have been for nearly three years) exposed to more noise than legally permitted by the planning controls which were put in place to protect residential amenity and in accordance with local and national planning policy.

In these circumstances, the wider public interest is best served going forwards by a refusal of the application and by the LPA enforcing the existing condition that LLA has breached.

2)What is proportionate?

Deciding on a proportionate response is more difficult now than it would have been had the LPA acted clearly and decisively once the likelihood of a breach of the condition was predicted in 2016. The LPA should have indicated to LLA that a breach would not be acceptable to the LPA and that the pace of growth should be moderated, so as to keep the operation in line with planning conditions.

By not signalling concern in 2016, the LPA has contributed to an operating configuration which is causing the breach to become embedded. LLA has also contributed by its delay in submitting the Application and by not providing sufficient detail to enable it to be determined. Given the above causes however, the need to find an appropriate resolution is not excused just because it may necessitate firmer action than would otherwise have been the case.

In considering proportionality, we would argue that the lack of corrective action both from the LPA and by LLA has been disproportionately lax and has permitted a situation to arise in which some 50 additional movements per day (from the scale of the LAeq change and from the BAP report) are occurring over and above what the current level of mitigation would permit.

Given that there are currently some 400 movements per day, this is a significant proportion of the noise burden, correspondingly causing a significant and hard-to-ignore environmental impact burden on local communities. This burden is exacerbated by the airspace constraints which often cause Luton departures to be held low often as far as Welwyn/Hatfield and beyond.

The size and widespread scope of the environmental impact which has arisen from this breach is, we submit, of sufficient magnitude that an enforcement action of similar magnitude is perfectly justifiable in the circumstances.

3) What maintains public confidence in the planning system and its decision-making integrity?

It is clear to almost anybody that if they were to erect a dwelling with no planning permission for their own commercial gain, or to apply for and receive permission to build four dwellings and then to build five, justice would be expected to be served and the due process of the planning system would generally require demolition where the rights and easements of others were being impacted.

The LPA's Enforcement Planning Policy states that:

"The Council is committed to the principle of good enforcement as set out in the Legislative and Regulatory Reform Act 2006."

For the LPA to ignore the breach and not enforce Planning Condition 10 would indicate that the LPA is in breach of its own Enforcement Policy. By not requiring LLA to conform to the planning condition, it would substantially damage public confidence in the planning system - particularly in the circumstance where (i) the LPA directly gains financially in proportion to the scale of the aviation traffic (ref the concession agreement); (ii) where the LPA via LLAL has incentivised the rate of growth which has caused the exceedance in the first place; (iii) where the LPA has apparently not adequately scrutinised the rate of growth and the risk of breach; and (iv) where the LPA did not signal early that a significant breach would be unacceptable.

We would argue that it is imperative in order to maintain public confidence in the planning system (and in the LPA and the impartiality of its decision-making integrity) for Condition 10 to be enforced and LLA fined for having knowingly permitted the breach to occur - and indeed for declaring in advance its intention to breach when the wording of Condition 10 was omitted from its Noise Control documentation.

The intention to continue to breach is also underlined by the foreword in LLA's 2018 Annual Monitoring Report: "We have a range of operating restrictions including movement limits and noise quota limits, and we are focussed on ensuring they are adhered to. We're also in the process of requesting temporary changes to our noise contour to ensure we remain fully compliant with existing regulations."

4) What the health, housing and welfare needs might be?

The World Health Organisation in its report Environmental Noise Guidelines for the European Region (2018) has highlighted the serious negative health effects of aircraft noise, particularly at night, and recommends threshold aircraft noise limits of 45dB Lden during the day and 40dB Lnight at night compared with the previous levels of 55dB and 45dB respectively. There is a growing body of evidence which indicates the harmful effects of noise on health, and the negative effect on children's reading and learning outcomes [Stansfeld, S.A., et al., Aircraft and road traffic noise and children's cognition and health: a cross-national study. Lancet, 2005. 365(9475): p. 1942-9].

A study from Germany has not only confirmed these findings, but also showed that children with language or retention disorders, or who are learning in a second language, experienced more impairment [Klatte M, Bergström K, and Lachmann T. Does noise affect learning? A short review on noise effects on cognitive performance in children. Front Psychol. 2013; 4: 578].

Given the close proximity of the airport to residential dwellings in South Luton, and the fact that Surrey Street Primary School and Breachwood Green School are overflowed at low level as well as the communities in Caddington, Breachwood Green, Slip End and Brickhill Park, it is clear that health, housing and welfare needs are served by reducing aircraft noise, not permitting it to increase or to be produced at a level above that which the planning conditions have established as a limit. For this reason also, the application to permit the noise contours to be exceeded must be rejected.

5) Who is affected?

Thanks to the inefficiency of current airspace design, people all over the wider area, as well as in Luton itself, are adversely affected by aircraft noise from Luton Airport. Departures can be held low (4,000ft) as far as Welwyn/Hatfield 16 miles down the departure track - an unacceptable local constraint which the airport operators have indicated will hopefully improve in due course. This constraint on climb rates was known about when the planning conditions were designed, and only when the constraint is removed and quieter aircraft proven to reduce noise might it be appropriate to consider increasing the number of flights.

However, any such decision must be considered in light of the requirement in the planning conditions for LLA to submit by January 2019 (as is stated in the Noise Report submitted for 14/01519/DOC) a report setting out a strategy for reducing the noise contours still further. In the meantime, and bearing in mind that noise contours and LAeq averages do not adequately describe the full impact of individual noise events, Condition 10 serves to regulate how many aircraft can be flown without delivering mitigation of noise through increased altitudes or aircraft with quieter (and more fuel-efficient) engines.

Fuel efficiency is an important factor: the Application incorrectly states that the request to modify condition 10 has no bearing on climate change. Again, LLA appears unable to indicate the number of aircraft movements which would currently be permitted, or to confirm the 50 additional movements per 24-hour period (ref the BAP report) which are being flown in contravention to the planning condition.

Since these are aircraft without the benefit of a significant proportion of quieter and more fuel-efficient engines, because insufficient time has been allowed by LLA for such engines to be delivered, the impact on climate change is greater than it would otherwise have been, and each such impact is cumulative and affects everybody.

The application enumerates the numbers of people affected by the current unauthorised breach, and these numbers need to be reduced by the LPA upholding the existing Condition 10 and enforcing should there be any future breach.

6) The severity of the breach and whether there is material harm or adverse impact on amenity?

The adverse effect on amenity has been illustrated by the representations submitted to the LPA objecting to the Application. The personal effects on people's quality of life is attested to by over 430 objections on the planning portal to this application. Whilst LLA still tries to play down the breach as 'negligible' this stance is not credible when the scale of movements inherent in a 1dB change in noise contour is appreciated: some 50 aircraft movements per 24-hour period, which is around 15% of daily movements, which is certainly not negligible.

7) Whether the case is simply a matter of regularising the development?

LLA has attempted to excuse its stance by alluding to the uncertainties in contour calculation. Such uncertainties are not new and would have been known about and taken into account in 2013. The same kind of noise monitoring equipment is used, and as LLA indicated in the first application, the noise consultant has spent considerable time rebasing the noise contour calculations so as to make them 'more reliable' (and, we note, lower).

The LPA will no doubt take into account the advice of its own noise expert on whether the evidence to demonstrate an even-handed and statistically reliable approach to this rebasing is sufficiently robust and reliable. It will also take expert advice on the dramatic change in forecasting which now appears to shift so much of the additional burden into the day rather than the night period. The LPA will be able to request data from LLA to demonstrate why the night noise contour report for Q2 2019 has again exceeded limits being at 41.3sq km, and whether the actual movements for June matched the forecast movements for June upon which the revised contour values in the application are predicated.

The LPA will also note the admission in the September 2019 NTSC meeting that there were significant errors in the Annual Monitoring movements figures provided for 2017, with some 11,000 movements unaccounted for in the Type Table, and will want to satisfy itself that it is being given accurate information in support of this application.

The current expansion of capacity at Luton Airport has resulted in the most dramatic increase in numbers of flights and noise and environmental impact in the entire history of the airfield. This impact has been exacerbated by the steady introduction of larger and heavier types of aircraft, offsetting the introduction of any slightly quieter types, and none of the commitments to increase altitude or provide any other respite have been delivered.

The LPA must accept some responsibility for the significance of this impact, having relaxed Condition 11i which would have served to control noise by focusing fines on type-specific noise violations, and also having incentivised faster-than-projected growth in the first place. The LPA will note that at present the "one-number-fits-all" Noise Violation Levels hardly lead to any fines, yet at the same time the Airport is breaching its noise contour: further evidence that amending Condition 11i was probably a mistake since it is no longer able to bear down on type-related noise in a fleet which is on balance currently becoming noisier rather than quieter (see the foregoing and the QMR).

It is also likely that in the hiatus following the departure of Wendy Rousell, there was inadequate scrutiny of the airport operation, leading to the early warnings in the 2016 Annual Monitoring data being missed or not progressed sufficiently rapidly to head off a breach in a controlled manner.

The Enforcement Policy states that "In exceptional circumstances, or where required by legislation, the LPA may depart from this Policy. Any decision to do so will be properly reasoned based on the evidence and fully documented." We have not seen any documentation held by the LPA that a departure from the enforcement policy is applicable in this case, despite the LPA stating that it will be "transparent."

Paragraph 6(g) of the policy even provides that the principles of the enforcement policy will be applicable to the LPA where it is found that they are in breach. As such, it should be irrelevant that the LPA own the airport. In fact, it could be argued that in the current circumstances, it is even more important that the LPA is seen to be doing the right thing in order to protect the people of Luton and the surrounding area.

The aim of the policy is apparently "to protect those businesses, individuals, consumers and residents from unlawful activity.". However, the LPA appears to be unwilling to apply the protection to those affected by the expansion of the airport and use the legislation that is in place to do just that.

Given that LLA submitted the application to vary condition 10 several months ago, but failed to submit an application with sufficient detail for officers to determine the application, which then warranted LLA having to supply further information which in our view remains woefully lacking in important detail, we would suggest that officers should now recommend refusal of the application, acquaint themselves with the current enforcement policy, and actively enforce against the airport for breaching condition 10.

Andrew Lambourne
LADACAN
6th January 2020