Third objection by LADACAN to Condition 10 variation application 19/00428/EIA

Further objection on behalf of members of the Luton and District Association for the Control of Aircraft Noise in respect of the Section 73 application to vary Condition 10 of 15/00950/VARCON ("the Application") in light of revised and additional information supplied, referencing:

a) Volume 2 – Environmental Statement - Nov 2019 ("the ES")
b) Volume 3 – Appendix 7B Aircraft Forecasts – Nov 2019 (“the Forecasts”)
c) Volume 3 – Appendix 7C Modelling Methodology – Nov 2019 (“the Modelling Method”)
d) Volume 3 – Appendix 7D Effect of Modelling Methodology – Nov 2019 (“the Modelling Effect”)
e) Planning Statement 40153BN3V3 – Nov 2019 (“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"). LLA’s independent noise consultants Bickerdike Allen Partnership is abbreviated to “BAP”.

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

f) 12/01400/FUL ES Appendix H 01 Noise and Vibration Report (“ES 2012 Appendix H”)
g) 12/01400/FUL ES Appendix H Noise Appendix N3 (“ES 2012 Appendix N3”)
h) 12/01400/FUL S106 612615, 18 Jun 2014 (“the Section 106 Agreement”)
i) Letter from Sunil Sahadevan, LBC Head of Development Management, to LADACAN Chair, 24 Dec 2019 (“the FOI Letter”)
j) Letter from Laura Church, LBC Corporate Director, Place and Infrastructure, to Alberto Martin, LLA CEO, 28 Nov 2019 (“the LBC Letter”)
k) Letter from Alberto Martin, LLA CEO, to Laura Church, LBC Corporate Director, Place and Infrastructure, 6 Dec 2019 (“the LLA Letter”)
l) London Luton Airport Ltd Company Accounts 2016 (“LLAL Accounts”)

Executive summary

This response should be read in conjunction with our previous responses, and focuses particularly on the following areas:

Section 1 of our objection shows that the ES provided by Wood on behalf of LLA fails to provide an adequate justification: most of the Statement of Need appears contrived, misrepresented or faulty.

Section 2 shows that there was clear obligation and opportunity for impending breach to have been foreseen and headed off, and that the failure to do so amounts to deliberate breach.

Section 3 shows that reasonable and available alternatives for actions to ameliorate the breach have not been considered.

Section 4 confirms that the impacts are some 50 movements per 24-hour period over what is legally permitted, which as we have previously indicated are causing people distress, harm and disturbance.

Section 5 raises wider concerns and calls on the LPA to act decisively and without further delay to reject this apparently disingenuous Application which attempts to justify clear and deliberate failure by LLA to respect and abide by the lawful planning regulations governing its operation. To determine in its favour would risk bringing the governance of local planning matters into disrepute.

1) Inadequate justification

1.1 One of the functions of an airport operator is to make slots available to airlines, and LLA does this each season by reporting its slot availability in advance to Airport Coordination Ltd (ACL). Between 2013 and 2020 LLA has permitted additional slots to be used and new routes to be opened up as its ACL declarations and Annual Reports show. This has been made possible by the Project Curium works to provide new stands, and to increase terminal and runway throughput.

1.2 The rate at which demand is satisfied by growth of passenger numbers is under LLA's control. It declares slot availability, and as a further lever of control it can apply a seat restriction (see LLA Letter). LLA has also reported to NTSC and to the LPA that it can apply restrictions on the grant of ad-hoc rights, and in extremis, slot rights can potentially be rescinded.

1.3 By saying *"LLA has **experienced** unprecedented levels of growth in passenger numbers which are considerably above those predicted in the application submitted in 2012."* (our emphasis) the ES in sections 1.2.3 and 2.1.2 is therefore misrepresenting the background to the application. An accurate statement would be *"LLA has **facilitated** unprecedented levels of growth in passenger numbers which are considerably above those predicted in the application submitted in 2012."*

1.4 The ES in sections 1.2.4, 2.1.3-2.1.5 and 3.3.9 claims that quieter aircraft were only available later than anticipated, but LLA's ES 2012 Appendix H clearly acknowledges that these would not be available until after 2017. The claim that the fleet is older than anticipated is also misleading: in fact, the accelerated capacity permitted by LLA has led to airlines introducing new and larger aircraft such as Airbus A321 types with unmodernised engines, counteracting any benefit from such quieter aircraft as have already been provided (ref 2019 Q2 Quarterly Monitoring Report).

1.5 The ES section 2.1.3 make a further misleading statement when it claims *"The existing aircraft mix being utilised at LLA is older and generates more noise than the aircraft mix associated with the 16.5 mppa that was anticipated in 2012."* The upper-end forecasts from 2012 were made on the assumption of "level playing field trading" and did not factor in the market distortion caused by the later financial incentivisation of growth airlines through reduced charges. 2012 forecasts showed 16.5 mppa being achieved in 2025, as Table 3.2 of the ES confirms. By that time, as the ES also confirms, the fleet mix will permit operation within all planning constraints including the noise contours. It is therefore clear that the breaches have been caused by rushed growth.

1.6 The confirmation in the ES section 3.2.11 that by 2024 the day and night noise contours will be back within their prescribed limits clearly shows that the claim in section 2.1.9 that *"LLA cannot continue to operate to achieve its permitted 18 million passengers"* is untrue. LLA can achieve its 18 mppa limit **once it has allowed sufficient time for partial fleet modernisation**, as has always been the case.

1.7 Nothing has changed except the senior management approach of LLA, which chose to favour pursuit of short-term commercial gain over its commitment in 2012 to balance growth rate and mitigation. All the noise planning conditions remain well-founded and achievable within the context of the permitted 18 mppa operation **at the appropriate time** – as always envisaged.

1.8 ES section 2.1.6 confirms that LLA is confident in delivering further contour reduction by 2028, which contradicts the claim in 1.2.5 that there is no headroom in the contours.

1.9 ES section 1.2.6 is also misleading: the planning controls are not couched in terms of "demand", they act to control the levels of operation permitted by LLA. Each year, BAP provides a detailed report to LLA and the LPA on the summer noise contour, explaining the cause of changes and the prediction for the forthcoming season. LLA had ample opportunity to scale and gear the growth its operation so as to match the mitigations available and to remain within planning limits.

1.10 ES section 2.1.8 and 3.3.11 attribute the breach to delays, however this again is misleading when measured against the report "A11060.03 N05 Luton Airport Condition 10 Variation - Update Rev.A" from BAP and also LLA's own Annual Monitoring Reports, all of which attribute the breach to the base number of flights being operated with an unmodernised fleet.

1.11 ES sections 3.4.4 and 3.4.5 refer to LLA's Noise Action Plan 2019-23 having been prepared for and approved by Central Government. LLA is therefore misleading DEFRA as well, since as we have indicated in previous submissions, the NAP item 3.4 categorically states *"We will operate within our agreed contour area limits. 57dB(A) Leq16hr (0700-2300) - 19.4 sq km. 48dB(A) Leq8hr (2300-0700) - 37.2 sq km."* and the NAP was submitted when the breach was known.

1.12 ES section 5.5.4 identifies that *"The Development Brief supports the principle of the expansion of the Airport through three key objectives: To make the airport a better airport; To make the airport a bigger airport; and To be the best neighbour they can be."* It fails to explain why LLA chose not to adhere to its planning conditions and thereby meet all three objectives, when such adherence would not have compromised the first two objectives.

1.13 The development brief is indeed a key planning consideration and, in the light of the past three years during which residents have been subject to significantly more movements per day then permitted, by a not yet appreciably modernised fleet, the balance of determination must surely recognise the need to rebalance growth and mitigation by insisting on LLA being a better neighbour and respecting its current planning conditions, following ICAO guidance as relevant in the circumstances:

1) restricting noise at source – fleet modernisation as acknowledged will take time
2) land use planning and management – not significantly applicable
3) noise abatement operational procedures – we are advised that these are in place already
4) operating restrictions – the remaining option, which LLA is therefore obliged to apply

1.14 Given that two revisions of the ES and accompanying documents have had to be requested by the LPA to achieve an application which can be assessed, and the number of areas in which the Statement of Need appears designed to mislead, it is surprising that ES section 4.1.3 states: *"This ES has been prepared utilising best practice guidance and industry standards. … Wood is registered with the IEMA's EIA Quality Mark Scheme. This scheme allows organisations to make a commitment to providing excellence in their EIA activities and have this commitment independently reviewed."*

1.15 We would indeed encourage the LPA to request such an independent review of Wood's EIA performance in relation to this application, and to ascertain whether the apparently misleading information arose from a failure to achieve a frank disclosure from LLA, or a conscious decision to present its very poor environmental track record in a less than transparent way.

1.16 In light of all the above, we would argue that this application has not established a transparent and justifiable Need. Instead, it appears to be an attempt retrospectively to justify and excuse a lack of adequate oversight in favour of short-term commercial gain, at the expense of residential amenity.

2) Inadequate scrutiny and control

2.1 It is unfortunately the case, as indicated in the LLAL Accounts and the LLA Letter, that LLA was incentivised by the Airport Owner LLAL through a revised Concession Agreement in 2014 to grow more rapidly, and despite the environmental caveat in the penultimate paragraph of the LLA Letter it appears that LLA lost sight of its obligations to observe the planning conditions:

I recognise, of course, that the Council has yet to make a decision on that application. However, as I am sure you will appreciate, it has been made in a context where (subject to the acceptability of any environmental impacts) the airports freeholder, LLAL, has been supportive of the growth of the airport, and where both parties have worked together to promote this.

2.2 We can find no provision in the revised Concession Agreement 2014, or in the corresponding Growth and Super Growth incentives with airlines, to limit growth rate *"subject to acceptability of any environmental impacts"*. We would encourage the LPA to ascertain by whom, when and how the environmental impacts of the incentivisation were assessed in the context of the agreed planning conditions designed to protect residential amenity and conform with the local plan.

2.3 The Section 106 Agreement makes clear in section 4.1(c) that one of the obligations on LLA is to pay an annual amount in respect of monitoring by the Director of Planning of the Agreement:

(c) to pay to the Council each year the sum of £15,000 (fifteen thousand pounds) in respect of the monitoring by the Director of Planning of the terms of this Agreement the first such payment to be made on Commencement of Development and subsequent annual payments on the anniversary of such Commencement; and

2.4 Although the FOI Letter suggests that the Director of Planning may not to have been aware of this, and although there was a hiatus in the attendance by the LPA at LLACC meetings following the grant of planning permission in 2013, the Town and Country Planning Act is clear: *"64.—(1) Where an authority or the Secretary of State has a duty under these Regulations, they must perform that duty in an objective manner and so as not to find themselves in a situation giving rise to a conflict of interest."*

2.5 We would therefore expect, given 2.3 and 2.4, for the LPA to be able to articulate its conclusion having assessed *inter alia* the noise contour reports produced by BAP each year, and to be clear that its formal response to LLA in Feb 2018, and its monitoring of the effectiveness of the initial plan put forward by LLA to resolve the breach, was robust and objective. There is concern over the conflict of interest created by virtue of the financial benefit deriving to the LPA and Airport Owner LLAL in direct proportion to passenger and cargo traffic at the Airport, and that the board and senior officer positions at Airport Owner LLAL are filled by members and senior staff of the LPA at its expense.

2.6 Nevertheless, primary responsibility for adhering to the legally agreed planning conditions rests with LLA, whatever its opinion of those conditions may be. It should not have been necessary for the LPA to write to LLA in Feb 2018 nor in Nov 2019 reminding LLA of the contour condition and requesting restraint. If LLA's Flight Operations team could not interpret the reports provided by BAP of performance in relation to planning limits, responsibility rests with the Managing Director or CEO as the case may be.

2.7 Direct representations were made to the previous MD in face-to-face meetings on more than one occasion by LADACAN and others during the material period pointing out that the operation needed to respect its social contract by restraining its rate of growth. The issue was also raised at LLACC Noise and Track Sub Committee meetings.

2.8 Since LLA appears to have ignored its obligation to respect the planning conditions, and did not apply effective controls or use all the control measures at its disposal, the resultant breaches constitute deliberate breach, which must attract a more stringent response from the LPA under its own Enforcement Policy, as well as under the national planning guidelines.

3) Inadequate consideration of options

3.1 ES section 2.1.7 states that LLA reviewed its operation as a result of 2017 and 2018 breaches to ascertain *"what measures LLAOL can reasonably take to take action and guard against further breaches".* It would be expected that the ES enumerates the options that were considered, and the actions taken, to assess and evaluate their effectiveness.

3.2 Instead, a particularly odd statement is made in ES section 2.2.3: *"A 'do-nothing' scenario was considered as the only possible alternative to the proposed variation. However, this would result in either a missed opportunity for economic growth as restrictions would need to be placed on airlines in order to be confident that compliance with the 2012 planning conditions is achievable. Furthermore, without restrictions on airlines there is a risk of repeated breaches of Condition 10. As such 'doing nothing' is not considered to be a reasonable alternative."*

3.3 The "*do-nothing scenario*" described above gives an example of a "do-something scenario" in which a clear action is proposed: *"restrictions would need to be placed on airlines"*. Yet the ES fails to evaluate this reasonable option, which LLA had already initiated in a letter entitled "LTN-S18-Noise-Restrictions" sent to its GA customers dated 27 February 2018, by for example:
a) Restricting allocation of new slots - *"No further day time slots will be allocated to aircraft greater than QC1 0600-2159 GMT 1st June – 30th September"*
b) Restricting rights associated with allocated slots - "*No equipment changes will be permitted on existing allocated slots that would involve replacing an aircraft with a QC value of 1 or less with an aircraft with a QC value greater than 1."*

3.4 Placing restrictions on airlines by restricting the allocation of new slots, and by restricting rights associated with existing slots, is clearly reasonable and achievable, since LLA has done it. Hence the ES has not considered all reasonable alternatives, but chooses instead to dismiss this option as "*a missed opportunity for economic growth"*, and this is clearly the nub of the issue.

3.5 If Project Curium simply could not be delivered due to unreasonable planning conditions, this Application might be viewed in a different light. That is, however, most certainly not the case.

3.6 Project Curium was proposed and consulted on and voted on by the LPA's Development Control Committee as a 15-year project bringing benefits, impacts and mitigations. The planning controls were carefully calibrated to match the projected rate of growth in the foreseen transition from smaller to larger aircraft, and noisier to quieter engines. The one thing which has undermined the balanced growth and mitigation has been the reckless speed at which LLA has permitted growth to occur, causing a very significant unplanned burden on local communities in Luton and across the wider area.

3.7 We contend that the combined effects of the underlying and fundamental conflict of interest, the financial incentivisation, and a perception of lack of scrutiny by the LPA led LLA during the period 2014-2018 to believe that it could ride roughshod over planning conditions which got in the way of its growth. We call on the LPA to determine against this application and signal that this is not the case: Project Curium has 8 years to run and plenty of time to deliver balance.

3.8 For all of the reasons above, the attempt in the ES to justify a "do nothing" option should be rejected and the condition should be enforced with an order to act to restrict movements.

4) Comments on impacts and modelling methodology

4.1 As far as we can see, the ES has failed to disclose transparently the impact of three years of breach in terms of what actually affects people: the number of additional aircraft movements during the affected period over and above what is permitted. We commented on this in our earlier submission.

4.2 Nevertheless Table 2 of "Volume 3 – Appendix 7A N65/N60 Contours – Nov 2019" enables a figure to be derived for daytime over 65dB by summing the currently permitted and proposed movements and taking the difference: the result is 33. For night-time over 60dB the difference is 13. The combined sum of 46 is just for flights over those noise limits, so likely to be less than the actual estimate of some additional 50 movements per 24-hour period which we had provided in our first objection. All our previous comments regarding impacts of these repeated breaches therefore still stand.

4.3 We have reservations about the methodology adopted to calibrate the INM-model to the actual noise experience at Luton Airport so that the derived noise contours are representative. Despite recent communications with BAP it still remains the case that:
a) airlines other than easyJet did not provide and apparently still have not provided accurate data about their departure procedures, and these procedures have an impact on the model by affecting noise closer in to the runway than the fixed noise monitors used for other calibration.
b) we believe in particular that RyanAir has changed from NADP-2 to NADP-1 on both departure directions since the brief South Luton calibration referred to in the Modelling Effect document section 2.3, and that this is material given the loudness of the Boeing 737-800s they operate.
c) The latest South Luton monitoring has not yet been analysed, and neither of the South Luton monitoring locations is ideal being some distance from the centre line.
d) The value of A3212neo arrival and departure noise differences quoted in the Modelling Method document are substantially adrift from currently observed values at Luton.

5) Final comments

5.1 It is not as straightforward as it might appear to be certain about what the Applicant is actually committing to should this Application be granted. On the face of it, LLA proposes a temporary relaxation of Condition 10 after which the original terms will apply for the remainder of the period up to 2028 as proposed in Appendix 7B Aircraft forecasts, and table 3.2 of the ES, along with a strategy for contour reduction which they now confidently predict will be deliverable.

5.2 Given that, we find it difficult to interpret the commitment in the revised PS at the end of section 5.2: *"Conscious of national and local policy, LLAOL would also propose to commit to additional mitigation beyond those stated above in order to ensure that noise levels decrease year on year. These additional mitigation measures are also set out within the Environmental Statement but essentially they seek to restrict the number of noisier planes flying day and night. Furthermore, any new aircraft slots will not be given to aircraft operating above QC 0.5 and a revised programme of charging will be implemented to incentivise the faster deployment of new aircraft. Such measures may lead to a reduction in the number of flights that would otherwise occur but by combining them with the implementation of the noise mitigation scheme they would enable LLAOL to honour its commitments to aircraft slots for 2019 and 2020 and as such enable the continued growth of the airport and the economic benefits that such growth would bring to the local, regional and national economies."*

5.3 On the one hand this confirms that even while in breach, LLA proposes to release new slots, which would be completely at odds with its stated aim of "doing all it can to mitigate and remove the breach". There are two simple courses of action to achieve this: change flight schedules to reduce the number of flights arriving close to the night time limits, or reduce the number of slots, even if this means paying compensation. LLA is not proposing to do either.

5.4 Instead it appears that LLA wants to continue to grow the airport, even though in breach, and even when it is also up against its 18 mppa limit. This approach appears calls into question any genuine desire to regularise and restrain activities which have grown beyond LLA's ability to manage within its legal limits. Such restraint would not compromise the aims of Project Curium since many of the economic benefits have been taken in advance. Restraint would simply bring the project back onto its proper track.

We call on the LPA to reject this Application and enforce the existing Condition on grounds that:

- the Application does not justify a genuine need;
- the breach was deliberately permitted by the Applicant and the Applicant is still ambivalent about actually restraining its operation;
- the Application has not investigated reasonable and available alternatives;
- significant disturbance and impact has been caused over an extended period to time to many people who are entitled to the protection of their residential amenity provided by the existing noise contour controls.

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20th January 2020