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London Luton Airport Ltd
By email: futureluton@llal.org.uk

15th December 2019

Proposed expansion of London Luton Airport – consultation response

This is the response of the Wildlife Trust for Bedfordshire, Northamptonshire and Cambridgeshire, and the Hertfordshire and Middlesex Wildlife Trust, to the statutory consultation by Luton Airport Ltd for the expansion of Luton airport.

The two Wildlife Trusts are conservation charities supported by over 55,000 members. We engage with planned development to protect the most important wildlife sites, and to promote positive conservation outcomes wherever possible.

We welcome the opportunity to comment on the proposals at this stage. We have been consulted at earlier stages in the process, as is set out in the consultation documentation.

Introduction

To comply with national policy, the proposals must adopt a target for measurable net gain. The National Planning Policy Framework (NPPF) requires all planning decisions to achieve a net gain for biodiversity. Although the consultation documentation refers to an “aspiration” of achieving a 10% net gain, the proposals as they stand do not make any firm commitments, and in our view they fail to demonstrate that they would achieve even no net loss of biodiversity, let alone a net gain.

The current proposals would result in the destruction of an area of County Wildlife Site, part of Wigmore Park, which was provided as mitigation for the public for previous development impacts at the airport. To avoid the same issue recurring, we would welcome assurance that the current proposals are sufficiently “future-proofed”, and that any subsequent proposals to increase passenger numbers would be accommodated without impacting on the mitigation / compensation being proposed.

Climate change is one of the most significant threats to wildlife globally. The Wildlife Trust is extremely concerned that new developments should not add to the current levels of CO2 emissions. The information provided with the consultation does not, at this stage, include a full carbon budget, although it is clear that this will be provided with the submitted Environmental Impact Assessment. Luton Borough Council's Executive has made a public commitment to carry out urgent work to tackle climate change, and to establish targets for carbon neutrality ahead of the current 2050 national target. We therefore expect that the application would focus robustly on carbon reduction and set out clearly the extent to which reliance on the Carbon Offsetting and Reduction Scheme for International Aviation (CORSA) will achieve that.

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Net gain

Planning policy currently specifically requires all developments to provide a net gain for wildlife. Paragraph 170 of the National Planning Policy Framework (NPPF) says that:

*“Planning policies and decisions should contribute to and enhance the natural and local environment by:
[...]*

d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;”

Paragraph 174 of the NPPF states that these gains must be measurable. The Environment Bill, which passed its second reading in the House of Commons but which fell foul of the prorogation of Parliament, sought to legally mandate that net gain. The recent consultation on implementation of this mandated net gain proposed that a minimum of 10% increase in identified “units” of biodiversity would be an appropriate level for developments to secure. Defra has devised a revised methodology for assessing the impacts and gains for biodiversity associated with development proposals.

Appendix 1 is an extract from the statement of case submitted by Natural England, the government’s conservation advisors, to the inquiry into the Bicester to Bedford section of East West Rail. Their submission sets out clearly the need for a major transport infrastructure project to achieve net gain for biodiversity. Network Rail have subsequently agreed that a net gain target will be applied to that section of the railway improvements.

LALL’s ‘Guide to Statutory Consultation’ states that *“Overall, our ambition is for the proposed development to deliver 10% biodiversity net gain through the extensive landscaping and habitat creation proposals incorporated within the scheme.”* Merely stating an ambition is not sufficient for a proposal to be compliant. There needs to be: a confirmed aim; a mechanism for delivery; monitoring proposals; and an acceptable means for additional compensation should monitoring show that the aim has not been achieved.

This issue is highlighted again in the Preliminary Environmental Information Report (PEIR) volume 1, which states: *“16.1.4 To provide a high-level quantification of the level of biodiversity that will be lost to the Proposed Development and the habitat creation/enhancement requirement, Biodiversity Net Gain calculation is being undertaken using the Defra metric (Ref 16.2), with an aspiration to deliver a 10% net gain. This aspiration is consistent with the government’s response to the net gain policy consultation (Ref 16.3) which states “we maintain the view that 10% strikes the right balance between government ambition for development and the pressing need to reverse environmental decline”. Again, the “aspiration” of delivering a net gain of 10% is not consistent with the government’s quoted response. A secured commitment to achieving a net gain of 10% would be:*

Monitoring proposals are outlined in the “Draft Outline Landscape and Biodiversity Management Plan” (Appendix 16 – 2), and the potential need for remedial action as a result of monitoring is recognised, but the plan indicates that the monitoring proposals have yet to be drawn up. The plan also only refers to LLAL and their contractors having roles in the monitoring process. We would expect the Local Authorities to have a role, required by condition or agreement, in ensuring that monitoring identifies the necessary remedial works, and that such works are carried out and themselves successful.

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Use of the Defra Biodiversity Metric

The PEIR volume 1, as quoted above, refers to the use of Defra's Biodiversity metric to assess the plans likelihood of achieving a 10% net gain for biodiversity, and Appendix 16-2 implies that the metric will be used iteratively to assess success, and to evaluate further compensation if subsequently required. We welcome the proposed use of the metric, which is a sensible approach to ensuring that the net gain is "measurable", as required by the NPPF (e.g. paragraph 175).

However, we are concerned that the statutory consultation includes proposals that set out the extent of predicted impact on biodiversity receptors, and propose mitigation and compensation which have been informed by the use of the metric, without including the calculations themselves. This makes it impossible for consultees to assess whether appropriate approaches have been taken to reach the level of net gain aspired to, and whether the metric calculations have been applied correctly. The final submission should include the metric used to assess the biodiversity impact and proposed compensation, not only for consultees to be able to scrutinise the basis on which the application is made, but also for the decision maker to be able to ensure that relevant policy is being complied with.

We are concerned that the current assessment may have undervalued the impact of the proposals. For example, on Page 650 of the PEIR it is reported that the loss of arable field margins and their associated arable plants will have a "low" impact. However, Appendix 16-1 Ecology Baseline Report, includes a report of invertebrate surveys undertaken in 2018. That report indicates that:

"The overall assessment of the Luton Airport survey area is of a site of high importance for invertebrate conservation at the county level.

• Key Habitats for open habitat invertebrates are (i) arable margins, field edges and field corners, (ii) disturbed areas with much bare ground, and sparsely developed ruderal vegetation, and (iii) short, flower-rich grasslands."

The loss of all or part of fields F9 and F11, as designated in the invertebrate survey report, therefore appears to include areas which are considered by the applicants' consultants to be of county level importance, but which have been assessed for the EIA (Environmental Impact Assessment) as being of low importance. The correct assessment of the importance of these areas is likely to have a significant impact on the value of biodiversity "units" when calculating losses through the Defra metric.

Similarly, without the metrics being available, it is not possible to ascertain what existing value has been given to the areas proposed for compensatory habitat. However, if an approach has been taken of assuming a low value, in line with the EIA but contrary to the assessment of county level importance in the invertebrate report, then the metric will significantly over-report the uplift in value in the compensatory habitat, and insufficient habitat will be provided to reach the proposed level of net gain.

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Additional compensation

On page 134 of the 'Guide to Statutory Consultation' it is stated that:

"In addition to these mitigation measures, we are exploring potential enhancement measures. These include:

- Off-site enhancement of designated sites within Luton, Bedfordshire and Hertfordshire
- Contributions to local biodiversity projects
- Enhancement of species-poor/defunct hedgerows and woodland creation to improve connectivity within the wider landscape"

It is our understanding from our engagement with the earlier consultation process that these measures have been proposed because the enhancements set out in the consultation are insufficient to provide net gain for biodiversity. If that is correct, and given our concern that the existing biodiversity value of the site is undervalued, these enhancement measures will need to be secured before the proposal is finally brought forward, and at a level sufficient to demonstrate that genuine, measurable net gain will result.

Again, because the metric calculations have not been included in the consultation, we can't calculate what level of additional enhancement measures will have to be secured. There are existing wildlife sites within the surrounding area which could have their condition enhanced, and therefore contribute to achieving net gain. For those enhancements to be considered in the metric calculation it will be necessary for there to be reasonable certainty that condition improvements can genuinely be secured, and we would urge the proposers to reach agreements with the owners before any enhancements are included in future iterations of the metric calculations.

Proposed habitat creation

The development site itself, and the areas to the east, give significant opportunities for habitat creation. The long term value of the created habitat will be reliant on the management proposals put forward. Unfortunately the "Draft Outline Landscape and Biodiversity Management Plan" is rather skeletal in its current form, and it is impossible at present to determine what the long term value of the created habitats will be.

The proposals include sections with high public access requirements. Such areas may well be suitable for the creation of the habitats identified as priorities in the invertebrate survey. However, the proposals will need to make a realistic assessment of the limitations that high public access will place on habitat value overall.

We note that areas of calcareous grassland are proposed to be created, and that these are indicated as being managed with low intensity grazing. We would like to highlight that under grazing of chalk grassland is often a significant factor in such habitat becoming unfavourable, and would urge that the ability to have higher intensity grazing in the future should be built into the management proposals.

It will obviously be necessary for the long term management of the created habitat to be secured for these habitats to be included in the net gain calculations.

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Water resources

The potential impacts of water abstraction arising from the development and operational phases of this proposal have the capacity to significantly affect the riverine environment. Throughout the region, rivers and their tributaries are being increasingly affected by a lack of water which has dramatically affected the fragile ecosystems they support. Much of this effect can be attributed to over abstraction.

We recognise that the PEIR commits to the completion of both a WFD Compliance Assessment and a Water Cycle Strategy for inclusion in the final Environmental Statement. In accordance with the requirement of NPPF for development to deliver a measurable net gain to biodiversity, the decision maker will have to be satisfied that all predicted impacts of abstraction on the river system of the local and wider area are fully understood and quantified so that they can evaluate whether those impacts can be adequately and measurably avoided, mitigated or compensated to secure net gain. Without this information, NPPF para 175 gives clear direction that applications must not be approved

If you have any further queries about any of our comments, please do not hesitate to contact me.

Yours sincerely,

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Appendix 1 – Extract from Natural England’s Statement of Case in respect of The Network Rail (East West Rail Bicester to Bedford Improvements) Order. 23 January 2019

“5.4 Net Gain Policy

5.4.1 NE expected that this Scheme would deliver a “net gain” for biodiversity. That is because there is a clear expectation in policy and based on Ministerial Statements that in schemes of this nature net gain will be delivered. In particular, strong policy support for net gain for biodiversity has been added to the revised National Planning Policy Framework (NPPF) published in July 2018 and is also contained in Defra’s (the Department for Environment, Food & Rural Affairs) 25 Year Environment Plan.

Strengthened policy support for provision of net gain

National Planning Policy Framework

5.4.2 The NPPF provides at para. 170(d):

‘Planning policies and decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures’ (underlining added).

5.4.3 Further, at para. 102(d) the NPPF provides:

‘Transport issues should be considered from the earliest stages of plan-making and development proposals, so that the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains’.

5.4.4 This demonstrates specifically in the context of transport infrastructure applications appropriate opportunities for net environmental gains should be identified and taken into account. That is because such schemes can typically have significant environmental impacts but also present realistic opportunities for ecological enhancements. That is the case here. If proposals for transport infrastructure are not to going to deliver “net environmental gains” then that will need to be justified.

“A Green Future: 25 Year Environment Plan”

5.4.5 The Government set out its ambition and expectation for infrastructure development to deliver net gain in its recent 25 Year Environment Plan (2018) (see pp. 32-34). The Plan signals the direction of travel in policy is to strengthen the net gain principle. As the Plan specifies its objective is to *‘leave the environment in a better state than we found it’* and *‘to embed an ‘environmental net gain’ principle for development, including housing and infrastructure’* (underlining added).

5.4.6 The Government is currently consulting on proposals to make biodiversity net gain mandatory across all relevant planning decisions (see *‘Biodiversity net gain: updating planning requirements’*). Whilst this indicates that the provision of net gain is not presently mandatory, it emphasises the existing policy aspiration for net gain and the policy direction to strengthen requirements on net gain.

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East West Rail Phase 2 proposals

5.4.7 Against that policy background, and as a Department for Transport funded infrastructure project, EWR Phase 2 should be providing net gain for biodiversity. On the Applicant's own case it does not (NR47, FEI Appendix 9.16, 5.1.1). As things stand, the Scheme would deliver a net loss in respect of biodiversity.

5.4.8 This is contrary to what was promised and expected when the Scheme was first brought forward. The Applicant originally provided detailed information on their intention to deliver a scheme with biodiversity net gain. This was set out in *'The Network Rail East West Rail (Western Section) Phase 2 Order Document 9.19: Biodiversity Net Positive Technical Appendix'* (July 2017). Which sets out at para 2.1.2 that *'East West Rail (EWR) Alliance, the organisation responsible for construction and delivery of East West Rail Phase 2, have a contractual commitment with Network Rail to "delivering measureable net biodiversity gain and positively contributing to the conservation of nature in the region". This is Objective ENV03 in the [East West Rail] Alliance's Sustainability Strategy.'*

5.4.9 However, the Scheme was revised and when later ecological information was supplied in July 2018 through the ES and other documents, the identification of opportunities for net gain had been dropped without justification. The instant proposal does not, contrary to NPPF 102(d), purport to identify, assess and take into account the opportunities for net gain or justify why the earlier proposals were dropped (on ecological or other grounds).

5.4.10 In NR54 (Proof of Evidence Stephanie Wray), at para 3.15.1, the Applicant now contends that "the focus of the principles that planning authorities should apply is upon the avoidance of significant harm to biodiversity by a development and the Order Scheme has been prepared with that principle in mind." However, that completely ignores the strengthened policy support for considering net gain. Indeed, for the reasons set out above, Natural England considers that the proposed Scheme does not even meet the 'avoidance of harm to biodiversity' aim.

5.4.11 Short of delivering on the opportunities for net gain which the NPPF says should be delivered and which the Applicant originally claimed existed, this Scheme will, on the Applicant's own evidence, deliver a net loss.

5.4.12 Network Rail has undertaken a calculation, using its Biodiversity Accounting metric, of the gains and losses for the proposed scheme as a whole, and by each individual route section. A biodiversity metric operates on the principle of applying scores to each of the various elements of biodiversity value, and then undertaking a multiplication sum using each of those scores, in order to produce a number that represents biodiversity value. This value is normally referred to in terms of biodiversity units. In NR54, the Applicant provides that that the Scheme will lead to an overall loss of 432 biodiversity units. This loss is across the majority of the Scheme Area, with only route section 2A achieving a small net gain of 8 units, whilst route section 2B is particularly negatively affected with a loss of 373 units.

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5.4.13 Such a loss is not acceptable of itself and, particularly against a policy and factual expectation that the Scheme could, and therefore, should deliver net gain. It is Natural England's view that the proposed Scheme could and should be delivered in accordance with The 25 Year Environment Plan; national policy, and The Network Rail East West Rail (Western Section) Phase 2 Order - Document 9.19 Biodiversity Net Positive Technical Appendix."

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