



Department
for Transport

Gareth Leigh
Head of Transport Infrastructure Planning Unit
Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR
Web Site: www.dft.gov.uk

3 April 2025

London Luton Airport Limited
Hart House Business Centre
Kimpton Road
Luton LU2 0LA

Dear Sir/Madam,

PLANNING ACT 2008

APPLICATION FOR THE PROPOSED LONDON LUTON AIRPORT EXPANSION DEVELOPMENT CONSENT ORDER

1. I am directed by the Secretary of State for Transport ('the Secretary of State') to say that consideration has been given to:

- The report dated 10 May 2024 ("the Report") of the Examining Authority ("ExA"), comprised of Jo Dowling BA (Hons) MPhil MRTPI, Beth Davies BSc (Hons) MSc FGS CGeol, Sarah Holmes BEng (Hons) CEng MICE FIHT, Dr Richard Hunt BSc (Hons) PhD MCIWEM C.WEM PIEMA CENV and Andrew Robinson BA (Hons) Dip TP MRPTI, who conducted an Examination into the application made by London Luton Airport Limited ("the Applicant") for the London Luton Airport Expansion Development Consent Order ("the Application") under section 37 of the Planning Act 2008 as amended ("the 2008 Act").
- The responses to the further consultations undertaken by the Secretary of State following the close of the Examination; and
- Late representations received by the Secretary of State following the close of the Examination.

2. Published alongside this letter on the Planning Inspectorate website is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport. ("the Report"). All "ER" references are to the specified paragraphs in the Report. Paragraph numbers in the Report are quoted in the form "ER XX.XX.XX" as appropriate.

THE APPLICATION

3. The Application was accepted for Examination on 27 March 2023. The Examination began on 10 August 2023 and was completed on 10 February 2024. The Examination was conducted on the basis of the written and oral submissions submitted to the ExA and by a series of hearings. The ExA also undertook 18 unaccompanied site inspections (including inspections on private land where the ExA obtained permission from the relevant landowners) between 23 May and 30 November 2023 [ER 1.6.15 - ER 1.6.16].

4. The Application would grant development consent for the expansion of London Luton Airport to enable an increase in overall passenger capacity to 32 million passengers per annum. The Application would involve the construction of a new passenger terminal and additional aircraft stands and include further works comprising of:

- the extension and remodelling of the existing passenger terminal (Terminal1);
- earthworks to create an extension to the current airfield platform;
- airside facilities including new taxiways and aprons, together with relocated engine run-up bay and Fire Training Ground;
- landside facilities, including buildings which would support the operational, energy and servicing needs of the airport;
- enhancement of the existing surface access network, including a new dual carriageway road 'the Airport Access Road', accessed via a new junction on the existing New Airport Way (A1081) to the proposed new passenger terminal along with the provision of forecourt and car parking facilities;
- extension of the Luton Direct Air-Rail Transit with a station serving the new passenger terminal;
- landscape and ecological improvements, including the replacement of existing open space; and
- further infrastructure enhancements and initiatives to support the target of achieving zero emission ground operations by 2040, with interventions to support carbon neutrality being delivered sooner including facilities for greater public transport usage, improved thermal efficiency, EV charging, on-site energy generations and storage, new aircraft fuel pipeline connection and storage facilities and sustainable surface and foul water management installations [ER 1.3.2].

5. These are collectively referred to as "the Proposed Development" in this letter.

6. During the Examination, the Applicant made two formal change requests to the Proposed Development to reflect a change to the method of discharge for foul or contaminated surface water and to request the inclusion of an acoustic barrier along the Airport Access Road. The Secretary of State agrees with the ExA that these changes should be accepted for consideration as they do not constitute a substantial material change to the development [ER 1.7.3 - 1.7.6].

SUMMARY OF THE EXA'S RECOMMENDATIONS

7. The principal issues considered during the Examination on which the ExA reached conclusions on the case for development consent are set out in the Report under the following broad headings:

- Initial Assessment of Principal Issues
- Preliminary Matters
- The Need Case
- Alternatives
- Air Quality
- Biodiversity
- Chilterns National Landscape
- Climate Change Resilience
- Design
- Geology and Land Contamination
- Greenhouse Gases and Climate Change
- Health and Community
- Historic Environment
- Landscape and Visual
- Land Use
- Major Accidents and Disasters
- Noise and Vibration
- Socio-Economics
- Traffic and Transport
- Waste and Resources
- Water Resources and Flood Risk
- In Combination and Cumulative Effects
- Other Matters
- Habitats Regulations Assessment
- The Case for Making the Development Consent Order
- Land Rights and Related Matters (particularly Compulsory Acquisition)
- Human Rights
- The Development Consent Order and Related Matters
- Public Sector Equality Duty

8. For the reasons set out in ER 8.2.5, the ExA recommended that the Secretary of State should not make an Order granting development consent for the Proposed Development [ER 8.3.1]. The ExA noted a number of outstanding matters at the close of the Examination that the Secretary of State may wish to obtain more information on [ER 8.2.5]. Consideration of these matters, where applicable, are set out in the relevant sections below.

SUMMARY OF SECRETARY OF STATE'S DECISION

9. The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this Application. This letter is the statement of reasons for the Secretary of State's decision

for the purposes of section 116 of the 2008 Act and regulation 31(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (“the 2017 Regulations”).

SUMMARY OF SECRETARY OF STATE’S CONSIDERATION

10. The Secretary of State’s consideration of the Report, responses to consultations of 2, 23 and 29 August 2024, 27 September 2024 and 11 November 2024, representations received after the close of Examination, and all other material considerations are set out in the following paragraphs. Where not otherwise mentioned in this letter, it is the Secretary of State’s view that these representations do not raise any new issues that are material to the decision on the Proposed Development.

11. Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendation of the ExA as set out in the ExA’s Report, and the reasons for the Secretary of State’s decision are those given by the ExA.

12. The Secretary of State is content that the Proposed Development is a Nationally Significant Infrastructure Project (“NSIP”) in accordance with section 14(1)(i) and section 23 of the 2008 Act [ER 1.3.4], and that section 105(2) of the 2008 Act has effect in relation to the Proposed Development. This sets out that the Secretary of State must decide this Application in accordance with any Local Impact Report (“LIR”) submitted, any matters prescribed in relation to development of the description to which the Application relates, and any other matters the Secretary of State considers to be both important and relevant to the decision [ER 2.2.2].

13. While the Airport National Policy Statement (“ANPS”) provides the primary basis for decision making on applications for a Northwest Runway at Heathrow Airport, the Secretary of State agrees with the ExA that it is an important and relevant consideration in respect of applications for other airport infrastructure in London and the southeast of England (paragraphs 1.12 and 1.41) [ER 2.2.3]. As works are also proposed to the strategic road network at M1 Junction 10, the Secretary of State considers that the National Policy Statement for National Networks (“NPSNN”) 2014 which provides planning guidance for NSIPs on the road and rail network, is also an important and material consideration under s105(2) of the 2008 Act [ER 2.2.4]. The National Networks National Policy Statement (NPS) (2024) was designated following acceptance of the application for Examination and based on the transitional provisions in paragraph 1.16, the 2014 NPSNN remains the relevant NPS in respect of this application [ER 2.2.4]. The Secretary of State acknowledges, however, that the NPS 2024 is capable of being an important and relevant consideration in the decision-making process. The extent to which it is relevant is a matter for the Secretary of State to consider within the framework of the 2008 Act and with regard to the specific circumstances of each Development Consent Order application. For the avoidance of doubt, the Secretary of State has had regard to and agrees with the national policies and strategies identified as relevant by the ExA and set out at ER 2.2.5 - 2.2.6; regional and local planning policy including the Luton Local Plan (“LLP”) and the City and District of St Albans District Local Plan Review 1994 [ER 2.2.7] and the LIRs prepared by Buckinghamshire Council, Central Bedfordshire Council, Hertfordshire County Council, Dacorum Borough Council, North Hertfordshire District Council and Luton Borough Council [ER 2.4.1]. Having considered the Environmental Statement (“ES”)

and environmental information provided, the Secretary of State considers that this information will be sufficient to enable her to reach a decision in compliance with the Environmental Impact Assessment (“EIA”) 2017 Regulations [ER 2.5.2] and that changes to this documentation and the two change requests did not individually or cumulatively undermine the original scope and assessment of the ES [ER 2.5.3].

14. The Secretary of State has also had regard to the environmental information associated with this scheme as defined in regulation 3(1) of the 2017 Regulations. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

Preliminary Matters

15. The Secretary of State has noted and agrees with the ExA’s assessment of the overarching procedural or technical preliminary matters that were taken into account in this application. Where appropriate the ExA considered these matters in the relevant topic area but to provide context and to prevent repetition several of the matters are addressed at ER 3.3.2 - 3.3.71 [ER 3.3.1]. A number of matters are further considered below.

Green Controlled Growth Framework (“GCG Framework”)

16. The Secretary of State notes the GCG Framework designed by the Applicant to control and manage the negative environmental effects generated by airports. The Applicant considered that the GCG Framework would place controls in four categories of environmental effects; aircraft noise, air quality, greenhouse gas emissions (“GHG”) and surface access [ER 3.3.2]. These topics were selected as the areas where environmental effects will continue to change over time, as passenger numbers grow, and technology improves. A summary of how the Applicant would expect the GCG Framework to operate is provided at ER 3.3.13 – ER 3.3.16. The Secretary of State notes the GCG Framework would be an overarching control [ER 3.3.2] and considers this further in other sections of this letter.

Airspace Change Process

17. With regard to the Airspace Change Process, the Secretary of State is aware, and as highlighted by a number of parties, that the Civil Aviation Authority (“CAA”) is currently carrying out a Post Implementation Review, assessing all the feedback received on the impact of Airspace Deployment 6 (AD6) at London Luton Airport. The Secretary of State notes the Applicant’s letter dated 27 September in response to representations made by the Hertfordshire Host Authorities which set out that the AD61 ACP Post Implementation Report Appendix Noise Technical Report (Ref 1) demonstrates that implementation of the AD6 Airspace Change Proposal has resulted in no significant changes to the Lowest Observable Adverse Effect Level (LOAEL) contour within which the assessments for the Proposed Development are based. As this is the subject of a separate regulatory procedure, which has not yet been finalised, the Secretary of State agrees with the ExA that these matters are outside the scope of this decision [ER 3.3.19].

Web-based Transport Analysis Guidance (“WebTAG”)

18. Like the ExA, the Secretary of State has had regard to the concerns raised, as summarised at ER 3.3.22 - ER 3.3.23, regarding whether a WebTAG assessment should be undertaken for aviation developments. Luton and District Association for

the Control of Aircraft Noise (“LADACAN”) asserted that because public money has been invested in London Luton Airport the WebTAG analysis requirement should apply [ER 3.3.24]. The Secretary of State agrees with the ExA that as the Proposed Development is not a Government intervention and would be commercially funded from airport profits, it would fall outside of the scope for a required assessment [ER 3.3.27].

New Century Park/ Green Horizons Park

19. The Secretary of State is aware of the hybrid planning permission (LBC reference 17/02300/EIA) granted to Luton Rising in 2021, which allowed for a mixed-use business park to the east of London Luton Airport originally referred to as New Century Park but later renamed Green Horizons Park [ER 3.3.68]. As this planning permission was due to expire in June 2024, the ExA recommended that the Secretary of State satisfy herself as to the status of this permission before making a decision [ER 3.3.69]. In her consultation letter dated 2 August 2024, the Secretary of State requested an update as to the status of the planning permission and in its response dated 19 August 2024, Luton Borough Council confirmed that the planning permission had been lawfully implemented by the required deadline of 28 June 2024. The Secretary of State is content the Green Horizons Park planning permission remains extant and is satisfied that the ES has taken into account the relationship between the Green Horizons Park and the Proposed Development [ER 3.3.70]

The National Planning Policy Framework (“NPPF”)

20. The Secretary of State is aware that a new version of the NPPF was published on 12 December 2024. The Secretary of State has considered the updated NPPF and considers that the modifications contained within it do not materially change the policy set out in the NPPF published on 19 December 2023. The Secretary of State is content that the updated NPPF would not support a different outcome in this case. The references in this letter and the Report are to the NPPF published 19 December 2023.

Consideration of ‘Neutral’ Matters

21. The Secretary of State notes that the ExA considered that the following matters weighed neither for nor against the making of the Order:

- Alternatives [ER 3.5.29]
- Design [ER 5.2.15]
- Climate Change Resilience [ER 5.2.107]
- Geology and Land Contamination [ER 5.2.98]
- Major Accidents and Disasters [ER 5.2.105]
- In combination and cumulative effects [ER 5.2.108]
- Waste and resources [ER 5.2.106]
- Water Resources and Flood Risk [ER 5.2.104]

22. With regards to Water Resource and Flood Risk, the ExA’s conclusion that this weighed neither for or against the Order was subject to a side agreement being reached between the Applicant and Affinity Water to ensure that the 2019 consumption

baseline is not exceeded during construction without prior agreement and monitoring [ER 3.22.111]. Post examination, the Secretary of State received confirmation from Affinity Water in their letter dated 9 April 2024 that the agreement on protective provisions that would avoid detriment to Affinity Water's undertaking had been reached and their objection was withdrawn. Although neither the ExA nor the Secretary of State were provided with details of the protective provisions, the Secretary of State is content that an agreement with Affinity Water is now in place, and she is of the same opinion as the ExA that issues of water demand and supply are a neutral matter [ER 3.22.111].

Principle of the Proposed Development and Consideration of Alternatives

Need for the Proposed Development

23. The ExA explored the need for the Proposed Development in detail during the Examination and its consideration of need is set out in section 3.4 of its recommendation report. The Secretary of State has considered the Applicant's Need case and supporting appendices and notes the summary provided at ER 3.4.6- ER 3.4.38 and agrees with the ExA that the key issues identified in respect of the need case focused on the following main themes:

- the principle of development including national aviation policy
- the strategic economic case; and
- demand forecasts.

Matters raised by the councils in LIRs

24. The Secretary of State has had regard to the matters raised in the LIRs submitted by Buckinghamshire Council, Central Bedfordshire Council, Hertfordshire County Council, Dacorum Borough Council, North Hertfordshire Borough Council and Luton Borough Council as summarised at ER 3.4.41 – 3.4.44. Luton Borough Council considered that Government policy was clear and unambiguous in its support for airport growth where it could be delivered within existing environmental obligations [ER 3.4.41], and although Central Bedfordshire Council did not specifically comment on need, its Statement of Common Ground reiterated Luton Borough Council's position with regard to national aviation policy being supportive of making best use of their existing runways [ER 3.4.42]. Buckinghamshire Council's LIR also noted the clear Government policy support for aviation growth and for airports making best use of their runways [ER 3.4.44]. While the Hertfordshire Host Authorities (consisting of North Hertfordshire District Council, Dacorum Borough Council and Hertfordshire County Council ER 1.3.7) had no fundamental concerns with the Applicant's need case, the Secretary of State notes that they stated that the Proposed Development should be considered on its own merits having regard to the LIRs, prescribed matters, and the overall 'planning balance' of needs and benefits with regard to important and relevant matters. The Hertfordshire Host Authorities considered there was not enough evidence to demonstrate that the economic and other benefits of the Proposed Development outweighed the adverse impacts [ER 3.4.43].

Matters raised in Relevant Representations and Written Representations

25. While the Secretary of State has had regard to the representations made in support of the Proposed Development [ER 3.4.48], she notes that a significant number of representations objected to the Proposed Development on a general in principle

basis [ER 3.4.46]. While the Secretary of State notes that some of these representations objected to the Proposed Development due to climate change matters, she agrees with the ExA that there is nothing in policy that seeks to reduce air travel due to climate change or to meet net zero obligations, a position which was reinforced in the Government's response to the UK Climate Change Committee's ("CCC") Annual Progress Report in October 2023 which stated that it was anti-aviation emissions, not flying, and that its existing policy frameworks provided a robust and balanced framework for airports to grow sustainably within strict environmental criteria such that it did not consider it needed to limit aviation growth [ER 3.4.61]. Further consideration of the impact on climate change is considered in the Greenhouse Gases and Climate Changes section of this letter.

National Aviation Policy

26. The Secretary of State considers that the policies listed at ER 2.2.3 – 2.2.5 of the recommendation report are relevant and important in respect of establishing whether the Development complies with relevant National and Local Policy.

The ANPS

27. The Secretary of State is satisfied that, while the Proposed Development is a NSIP in accordance with sections 14 and 23 of the 2008 Act by virtue of it being an alteration of an airport in England which would enable an increase by at least 10 million per year, the number of passengers for whom the airport is capable of providing air passenger transport services [ER 5.2.1], the ANPS does not have effect in relation to the Application [ER 2.2.1]. However, paragraphs 1.12 and 1.41 of the ANPS make it clear that its contents will be an important and relevant consideration under s.105 of the 2008 Act in the determination of an application for development consent for any other airport development, particularly where it relates to London or the Southeast of England [ER 2.2.3 and ER 5.2.3]. The ANPS provides the primary basis for decision making on development consent order applications for Government's preferred scheme for a Northwest runway at Heathrow Airport to address the capacity gap identified by the Airports Commission [ER 2.2.1]. Paragraph 1.13 of the ANPS sets out the:

- Government's policy on the need for new airport capacity in the Southeast of England;
- Government's preferred location and scheme to deliver new capacity; and
- particular considerations relevant to a development consent application to which the ANPS relates.

28. Chapter 2 of the ANPS sets out the need for additional capacity in the Southeast of England. It states that aviation demand is likely to increase significantly with all major airports in the Southeast of England expected to be full by the mid-2030s, and that, even on the Department's low demand forecast, demand is expected to outstrip capacity at these airports by at least 34% by 2050 (paragraph 2.12). Chapter 3 of the ANPS sets out why the Heathrow Northwest Runway project, with a package of supporting measures, is Government's preferred option for meeting the need for new capacity in the Southeast of England set out in chapter 2.

29. While the ANPS provides the primary basis for decision making on applications for a Northwest Runway at Heathrow Airport, the Secretary of State agrees with the ExA that it is an important and relevant consideration in respect of applications for

other airport infrastructure in London and the southeast of England (paragraphs 1.12 and 1.41) [ER 2.2.3 and ER 3.4.58]. Although the ANPS focuses on the delivery of capacity through the provision of the Northwest Runway at Heathrow, it states at paragraph 1.42 that: "... in light of the findings of the Airports Commission on the need for more intensive use of existing infrastructure as described at paragraph 1.6 above, the Government accepts that it may well be possible for existing airports to demonstrate sufficient need for their proposals, or different from the need which is met by the provision of a Northwest Runway at Heathrow".

30. The ANPS also takes into account the Airports Commission's recommendation that there remains a need to make best use of existing airport infrastructure (ANPS 2.22). At paragraph 1.39 it states: "...Government has confirmed that it is supportive of airports beyond Heathrow making best use of their existing runways. However, we recognise that the development of airports can have positive and negative impacts, including on noise levels. We consider that any proposals should be judged on their individual merits by the relevant planning authority, taking careful account of all relevant considerations, particularly economic and environmental impacts."

31. The Hertfordshire Host Authorities considered that it was not the case that "there is a presumption in favour of the application being granted in accordance with the Airports NPS". The Secretary of State agrees and considers that the application should be determined on its own merits having regard to environmental and economic factors [ER 3.4.58].

Beyond the horizon: The Future of UK Aviation Making Best Use of Existing Runways ("MBU")

32. The MBU policy was published by the Department for Transport in June 2018 and adopted alongside the ANPS and confirms Government support for airports beyond Heathrow making best use of their existing runways. It recognises that development of airports can result in negative impacts as well as positive local impacts, and that any development seeking to make best use of their existing runway will therefore need to demonstrate how it will mitigate local environmental issues as part of their planning application (MBU paragraphs 1.23-1.24 and 1.29). The Secretary of State is satisfied that the policy within MBU is important and relevant to decision making in respect of proposed airport development being submitted as an NSIP [ER 3.4.59].

33. The MBU policy is clear that it does not prejudge the decision of the relevant planning authority which must take into consideration all relevant matters, in particular the economic and environmental impacts that are expected as a result of a development and proposed mitigations (MBU paragraph 129) [ER 3.4.10]. The Secretary of State notes that there was agreement that MBU is supportive of airports making best use of existing runways, although there were differences on the weight to attach between the economic and environmental considerations [ER 3.4.59].

34. The Secretary of State is satisfied that MBU policy does not limit the number of airport developments that might be granted, and like the ExA, considers that the MBU policy does not restrict airports seeking to increase the infrastructure within their airfields to intensify existing runways and is content that the provision of the proposed airfield infrastructure as part of the Proposed Development would comply with MBU policy [ER 3.4.59].

The Aviation Policy Framework ("APF")

35. The ExA identified the APF as relevant to the Proposed Development [ER 3.4.9]. The APF was published in March 2013 and recognises that the aviation sector is a major contributor to the economy and sets out Government support for the growth of the aviation sector within a framework that maintains a balance between the benefits of aviation and its costs (APF, executive summary, paragraph 5). The APF policy has been supplemented by the future of UK aviation 2018 (“Aviation 2050”) considered below.

36. The APF provides that one of Government’s main objectives is to ensure that aviation continues to make the UK one of the best-connected countries in the world and included in this is increasing links to emerging markets so that the UK can compete successfully for economic growth opportunities (APF executive summary, paragraph 9). The ‘Supporting airports across the UK’ section (APF paragraphs 1.20 – 1.35) recognises that airports create local jobs and fuel opportunities for economic rebalancing in their wider region or area (paragraph 1.20) as they act as focal points for business development and employment (paragraph 1.22). The aviation sector in the UK is largely privatised and operates in a competitive international market, the Government continues to welcome significant levels of private investment in airport infrastructure (APF executive summary, paragraph 8). The APF recognises that maintaining the UK’s international connectivity is a complex and contentious one, but that solving it is crucial to securing the UK’s long-term economic growth (APF executive summary, paragraph 24).

Aviation 2050

37. The ExA identified Aviation 2050 document as relevant to the Proposed Development [ER 3.4.9]. The Aviation 2050 document was published by the Department for Transport in December 2018 and was the final part of the Government’s consultation on the policy proposals for the development of a long-term Aviation Strategy to 2050 and beyond.

38. The Aviation 2050 paper is clear that there is a need to increase capacity in the South-East by 2030, and that the forecasted aviation demand in the period to 2030 can be met through a northwest runway at Heathrow and by airports beyond Heathrow making best use of their existing runways, subject to environmental and other impacts being addressed (Aviation 2050, paragraph 3.11). It recognises the benefits of this growth to the UK, providing it takes place sustainably, and considers that a thriving aviation sector is tangible evidence of economic confidence, growing tourism, increased trade, and business investment (Aviation 2050, page 6). Chapter 4 sets out Government support for regional growth and connectivity, and identifies regional airports as vital for local economies, providing domestic and global connectivity, employment opportunities, and a hub for local transport. It wants to maximise these benefits through markets that operate for consumers and local communities, and support airports that deliver the connectivity regions need, an industry that provides high quality training and employment opportunities to all, and a freight sector unburdened by unnecessary barriers.

39. The Aviation 2050 paper acknowledges that future success cannot be taken for granted and that the aviation sector faces global challenges; rising demand coupled with changing customer expectations, technological change and tight profit margins in a fiercely competitive market (Aviation 2050, page 6). Infrastructure development is seen by the Government as key to unlocking growth potential (Aviation 2050, paragraph 1.12). The Secretary of State is satisfied that the Proposed Development

aligns with the objectives set out in the Aviation 2050 document which sets out the importance of aviation to the whole of the UK, the need to increase capacity through more intensive use of existing runways and airspace and the connection aviation provides both within the UK and with the rest of the world. Aviation 2050 also outlines objectives relating to air quality and noise aimed at reducing total adverse effects on health and quality of life from aviation noise [as noted at ER 3.13.6] along with potential mitigation measures for carbon and greenhouse gas emissions (Annex C).

40. In 2019, the Government published a consultation response on legislation enforcing the development of airspace change proposals and an associated impact assessment.

41. Given the unprecedented challenges faced by the aviation sector as a result of the COVID-19 pandemic, instead of a response to the remaining parts of the Aviation 2050 consultation, the Government instead published Flightpath to the Future; a strategic framework for the aviation sector (2022) (“FttF”) on 26 May 2022. FttF is a strategic framework that builds on the responses received to the Aviation 2050 consultation. It established the Government’s ambitions and commitments for aviation over the next 10 years. Point 4 of the 10-point plan for the future of aviation contained within the document sets out the Government’s plan to deliver the ambition for the use of sustainable aviation fuel by 2030 to put the sector on course for Jet Zero by 2050. Point 5 highlights a plan to capture the potential of new technology and its uses to achieve quicker, quieter and cleaner flights. Point 6 recognises the importance of the UK’s extensive airport, airfield and aviation infrastructure networks in unlocking local benefits and levelling up the UK through trade, air freight, aerospace, investment and tourism and improved connections across the UK and regions. Point 7 focuses on the delivery of enhanced skills and diversity across the sector.

42. It is noted that the ExA considered that FttF provides an updated Government position from MBU, where Government support for sustainable airport growth was reiterated on page 9 along with the key role of airport expansion in enhancing connectivity. The ExA noted that FttF supports growth “where it is justified” (as repeated in paragraph 2.27 of the Jet Zero Strategy: delivering net zero aviation by 2050 (July 2022) (“JZS”)) [ER 3.4.60].

43. Having considered the responses at the Issue Specific Hearing on 27 September 2023 and noting the reference in paragraph 1.42 of the ANPS of the possibility for other airports to demonstrate sufficient need for their proposals, the Secretary of State agrees with the ExA that FttF does not represent a material shift in policy and that it reiterates that whilst there is support for sustainable airport growth, that support is not unconditional, and an Applicant must demonstrate that the case for any expansion justifies the negative environmental impacts that may be experienced against any economic benefits [ER 3.4.60].

Conclusions on the Principle of the Proposed Development and National Aviation Policy

44. While the Secretary of State has had regard to the concerns regarding the suitability of the current location of London Luton Airport noting representations which stated that it was unsuitable for expansion for reasons including that it was situated near residential areas and its restricted size and local topography [ER 3.4.46, fourth bullet], the Secretary of State agrees with the ExA that as the principle of an airport in this location is well established, this is a matter that falls outside the consideration of

this application. The appropriateness of the proposed expansion is, however, a matter which must be considered on its own merits [ER 3.4.62].

45. Like the ExA, the Secretary of State has had regard to comments regarding other airports being more suited to expansion or being able to accommodate any capacity [ER 3.4.46, fifth bullet], but agrees with the Applicant that the Government seeks a competitive aviation system which does not mean filling up each airport in turn [ER 3.4.62]. Further consideration of how existing capacity at other airports may affect the forecasting figures is considered below.

46. Although the Secretary of State has considered the matters raised regarding funding [ER 3.4.47, final bullet], she agrees with the ExA that she can only consider the planning merits of the Proposed Development and whether the Applicant has sufficient funding is not a relevant matter in considering the need for the Proposed Development [ER 3.4.63].

47. Overall, like the ExA, the Secretary of State is content that there is clear in-principle support of the Development by relevant national aviation and aviation planning policies. While she recognises the representations which questioned the need for the Proposed Development, the Secretary of State is satisfied that Government policy is supportive of sustainable airport expansion in principle as demonstrated by FttF (page 20) which states “Airport expansion has a key role to play in boosting our global connectivity” and that “We remain supportive of sustainable airport growth, and our existing planning frameworks provide a robust and balanced framework for airports to grow within our strict environmental criteria”. [ER 3.4.64]. However, in accordance with the MBU (paragraph 1.29) the Secretary of State is mindful that the in-principle support must be considered against the economic and environmental considerations and this is addressed further in the planning balance section of this letter [ER 3.4.65]

Strategic Economic Case - Need Case for Airport Growth

Matters Raised by the Councils in LIRs

48. The Secretary of State notes the matters raised by the councils in their LIRs in relation to the strategic economic case as detailed at ER 3.4.66 – 3.4.69. Luton Borough Council’s LIR noted that the NPPF set out the overarching economic objective of “a strong, responsive and competitive economy” (paragraph 8), and made reference to Build Back Better: Our Plan for Growth (March 2021) (“BBB”) which outlines three key areas of investment for economic recovery and levelling up. Further, it commented that the Levelling up white paper (February 2022) aimed to boost productivity, pay, jobs and living standards and spread opportunities. The Secretary of State notes that Luton Borough Council considered that the socio-economic impact of the proposal would be wholly positive, and that London Luton Airport was a vital asset to the region with its growth being a central pillar to the Council’s strategic vision [ER 3.4.66].

49. While Central Bedfordshire Council’s LIR did not specifically comment on the need for the Proposed Development from a strategic economic perspective, it noted policies in the Central Bedfordshire Local Plan (“CBLP”) and the approximate number of jobs that could be delivered by the Proposed Development [ER 3.6.67]. The Secretary of State has also noted Buckinghamshire Council’s LIR which commented that it understood Government policy on aviation in the context of need and could see

benefits for Buckinghamshire in respect of economic development and growth [ER 3.4.68].

50. The Secretary of State has also had regard to the Economic Impact Assessment Independent Review submitted by the Joint Host Authorities which reviewed the soundness of the assumptions and conclusions informing the need case and did not identify any principal areas of disagreement [ER 3.6.69]. At the close of the Examination, the Secretary of State is aware that there were no areas of disagreement between the Applicant and the Joint Host Authorities on the strategic economic case for airport growth [ER 3.4.87].

Matters Raised in Relevant Representations and Written Representations

51. The Secretary of State has considered the representations regarding the strategic economic need case as summarised at ER 3.4.70], the detailed submissions from the New Economics Foundation challenging the economic benefits of aviation growth and the benefit to business productivity [ER 3.4.72] and detailed submissions from the Harpenden Society that also challenged the benefits of aviation growth [ER 3.4.73] together with the Applicant's responses [ER 3.4.71]. The Secretary of State has also considered the representations and submissions raised in support of the strategic economic case [ER 3.4.74]. At the close of the Examination, the Secretary of State notes that disagreement remained between the New Economics Foundation, the Harpenden Society and other Interested Parties regarding the strategic economic case for airport growth [ER 3.4.87], including that the data on economic impact was out of date having regard to changes in air travel and challenges to benefits of airport growth. The Secretary of State notes the submissions made challenging demand forecasts and productivity impacts [ER 3.4.83], and submissions on the Airport's position regarding the export of high value goods and its role as a hub supporting the growth of high value sectors [ER 3.4.85], and the aspirational nature of the references to increasing air cargo [ER 3.4.86], and the Applicant's responses [ER 3.4.84].

Conclusions on the Strategic Economic Case

52. The ExA considers that the role of airports in supporting the economies they are situated within and supporting the UK's global connectivity is well rehearsed in Government Policy including the APF (chapter 1); FttF (Executive summary); and JZS (paragraph 2.27) [ER 3.4.88]. While the Secretary of State notes the comments made by the New Economics Foundation regarding the length of time since the Government's last comprehensive review of the economic impacts of air transport, she agrees with the ExA that the more recently published FttF (particularly pages 19 to 21) and JZS include similar statements to those expressed in chapter 1 of the APF and that the same can be said of Build Back Better as referenced by the Applicant and Luton Borough Council [ER 3.4.88].

53. With regard to jobs, the Secretary of State considers the detail of the number of jobs created, GDP benefits and quality of jobs considered in the socio-economic section of this letter but agrees with the ExA that the Proposed Development has the potential to generate a significant number of jobs both directly at the airport and indirectly through supply chains and other services. While noting that economic benefits could be experienced through other developments if they were to materialise, the Secretary of State has not given these schemes any weight as they do not form part of this application. Like the ExA, the Secretary of State considers that the role of

London Luton Airport to the local economy and the expansion, provides an opportunity that could give rise to substantial economic effects [ER 3.4.89].

54. With regard to the need for air connectivity, the Secretary of State notes the consideration given to this matter by the ExA who sought to understand the need for greater connectivity for businesses within the Oxford-Cambridge Arc and in the wider region, why it was required and the evidence that existed, and the impact to businesses in the absence of expansion [ER 3.4.79], the Applicant's further comments on connectivity [ER 3.4.80] and responses from Luton Borough Council [ER 3.4.83], the Harpenden Society [ER 3.4.82] and the New Economics Foundation [ER 3.4.82]. The Secretary of State is mindful of the comments in the Executive Summary of the JZS which makes clear that the Government recognises the aviation sector's role in making the UK one of the world's best connected and most successful trading nations in the world. The Secretary of State agrees with the ExA that the Proposed Development could support the aspirations of the Oxford-Cambridge Arc but considers that the full extent of this support is unclear [ER 3.4.90].

55. The Secretary of State has had regard to the Joint Host Authorities comments which explain the importance of London Luton Airport's growth to international connections and exports in the east of England and agrees with the ExA that the wider areas surrounding London Luton Airport contain international businesses that may require increased connectivity, which the Proposed Development could help to facilitate. Although the Secretary of State has taken into account the comments made by the Harpenden Society that air connectivity is not necessarily a challenge for the South-East, having noted the content of paragraph 8 of the APF, FttF and the Applicant's comments, she recognises the importance of competition within the aviation sector to meet interests of air passengers and other users [ER 3.4.90].

56. Various Interested Parties questioned the need for extra capacity to serve business demand due to falling passenger numbers. While the Secretary of State notes the points raised, she is content that the need for the Proposed Development does not rely solely on meeting business demand as demonstrated by the figures in Figure 6.5 of AS-125 which projects that 64% of the 32 million passengers per annum ("mppa") would be through UK Leisure passengers, 25% through foreign business with 8% as business passengers. The Secretary of State has had regard to representations that the Proposed Development would lead to tourist deficits as it would predominantly be a leisure airport [ER 3.4.70, eight bullet], and agrees with the ExA that Government policy does not seek to restrict outbound tourism activity. In reaching this conclusion the Secretary of State has had regard to the FttF (page 19) which highlights the importance of promoting an improving international connectivity which "includes supporting the UK's essential inbound visitor economy, which has huge economic and local benefits throughout the UK" [ER 3.4.91] as well as Aviation 2050 which sets out Government support for regional growth and connectivity (page 14), and identifies regional airports as vital for local economies, providing domestic and global connectivity, employment opportunities, and a hub for local transport (Chapter 4).

57. The Secretary of State has had regard to the conflicting comments made by Interested Parties concerning the contribution the Proposed Development would make to Levelling-Up. Like the ExA, the Secretary of State considers that the Proposed Development could play an important role in supporting the Government's levelling up agenda, particularly noting that the content of page 42 of FttF states "Aviation has an

essential role to play in delivering a wide range of benefits for the UK and supporting the Government's levelling up agenda" [ER 3.4.92].

Demand Forecasts

Matters Raised by the Councils in LIRs

58. The Secretary of State notes the matters raised by the councils in their LIR's as summarised at ER 3.4.94 – 3.4.97. Buckinghamshire Council's LIR noted that there was expected to be a strong growth in demand for air travel and that additional capacity would be required at London Luton Airport to keep pace with projected demand but made no further comments on the Applicant's forecasting [ER 3.4.96]. Luton Borough Council's LIR advised that along with the other host authorities, it had commissioned Chris Smith Aviation Consulting Limited to review the Applicant's demand forecasts and traffic projections [ER 3.4.94] and the Secretary of State notes its initial review of the need case as summarised at ER 3.4.97, together with the Applicant's response set out at ER 3.4.98.

59. The Secretary of State also notes the representations made by the Hertfordshire Host Authorities who considered that the major influence on demand at London Luton Airport was the capacity available and its utilisation at Stansted, Gatwick and Heathrow which it considered depended on whether a new runway would be at Heathrow or the emergency runway at Gatwick being brought into regular use. The Hertfordshire Host Authorities considered that there was considerable uncertainty and downside risks that the Applicant's forecasts were likely to be too high and that the need case and economic benefits may therefore have been overstated [ER 3.4.95].

60. At the close of the Examination the Secretary of State notes that there was no disagreement between the Applicant and the Joint Host Authorities that an expanded airport could attract 32mppa. However, the timing of when this increase would be realised remained an area of disagreement, ranging from 2043 in the Applicant's case to 2050 in the Joint Host Authorities' case [ER 3.4.126].

Matters raised by other Interested Parties

61. The Secretary of State has considered the matters raised by Interested Parties regarding demand forecasts [ER 3.4.100 - 3.4.103], including the Chris Smith Aviation Consulting Limited report as commissioned by Luton Borough Council and the other host authorities [ER 3.4.94] which noted the downside risks which could lower demand beyond that predicted for example, the Russian invasion of Ukraine and its impact on cost of living, potential for changes to Air Passenger Duty Levels, cost of Sustainable Aviation Fuel and issues with post-COVID-19 recovery [ER 3.4.97, third bullet]. The ExA concluded that the risks mentioned in paragraph 3.4.97 of the recommendation report had been adequately accounted for in the Applicant's modelling and noted that this follows a similar methodology in its approach to that used by DfT in its own forecasting models [ER 3.4.127].

62. The Secretary of State has had regard to the representations that maintained that there is already both sufficient and proposed capacity at other airports in the southeast [ER 3.4.105 - 3.4.107] and the evidence presented by the Applicant as summarised at ER 3.4.107 – 3.4.112 and notes that at the end of the Examination, the capacity that could be attributed to both Heathrow and Gatwick in a no development scenario remained an area of disagreement between the Applicant and the Joint Host Authorities [ER 3.4.117]. The ExA considered that the Applicant's evidence is sufficient to demonstrate that spare capacity at the other London airports is limited, which is

consistent with the Government's position that London airports would be capacity constrained by the 2030s and that growth at London Luton Airport could play an important role in relieving this [ER 3.4.128]. The Applicant is correct that the existence or potential existence of spare capacity at other airports is not a reason for refusal of a MBU application [ER 3.4.128].

63. The Secretary of State has noted that the trend at London Luton Airport has seen the average number of seats per flight increase due to airlines replacing older aircraft with larger versions and a higher proportion of seats being sold on each flight ("the load factor") and that forecasts assume that the average passengers per passenger air transport movements ("PATM") would increase by approximately 1% per annum until the mid-2020s and slow to 0.25% per annum until the end of the forecast period, resulting in an average total of around 181 passengers per PATM. [ER 3.4.113]. Having had regard to the consideration given to the implications of increased passengers per PATM [ER 3.4.114- ER 3.4.115], the ExA concluded that existing airports would seek to utilise as much of their capacity as possible which could continue to see increases in passengers per PATM which in turn could affect passenger demand at London Luton Airport. The forecast in the core growth planning case accounts for the potential for an additional runway in the London airport system or two runways in both a slower and faster growth scenario and the ExA considered that any increases in both passengers per PATM and load factor would likely have a limited effect on the forecasts [ER 3.4.129].

64. The Secretary of State has had regard to the Luton Borough Council's final position statement which queried whether the speed of passenger growth mattered in view of paragraph 30 of the Stansted decision letter which states, *"It remained unclear throughout the Inquiry, despite extensive evidence, why the speed of growth should matter in considering the appeal. If it ultimately takes the airport longer than expected to reach anticipated levels of growth, then the corresponding environmental effects would also take longer to materialise or may reduce due to advances in technology that might occur in the meantime. The likely worst-case scenario assessed in the ES and ESA, and upon which the appeal is being considered, remains just that. Conversely, securing planning permission now would bring benefits associated with providing airline operators, as well as to other prospective investors, with significantly greater certainty regarding their ability to grow at Stansted, secure long-term growth deals and expand route networks, potentially including long haul routes."* [ER 3.4.117]. She notes that the ExA agreed with this position and considered that a permitted increase in capacity at an airport would increase operator confidence to invest in expanding operations at a particular airport to meet that capacity [ER 3.4.130].

65. The ExA reported that further changes to the economic forecast were published by the Office for Budget Responsibility. As the Applicant's demand forecasts were based on data from March 2022, and despite maintaining that it did not consider that short term economic or market fluctuations were directly relevant to a long-term planning decision particularly given that a range of forecasts had been developed in this case, the Applicant produced an update to the underlying forecasts at Deadline 8 in the form of sensitivity tests [ER 3.4.119]. The ExA noted that the updated economic forecasts identified lower GDP growth in the short to medium term than that set out in the Need Case and the Applicant stated that this meant that growth to 21.5/23mppa may be lower in the short term with slippage to 2028 rather than 2027 in the core planning case. [ER 3.4.120]. The ExA considered that the effect of changes in GDP

on the forecasts was sufficiently addressed by the Applicant at Deadline 8 [ER 3.4.131].

66. The ExA's Report also detailed the representations made by the Harpenden Society who considered that the Applicant's model was not evidence of demand. The ExA was satisfied that the forecasts have been prepared using established industry practice for transport forecasting models. While the Secretary of State is aware that her Department's forecast within the JZS accounts for a capacity at LLA of 32mppa, these figures are primarily used to inform long term strategic policy rather than detailed forecasts at each individual airport ('UK Aviation Forecasts – Moving Britain Ahead October 2017'), and therefore placed no weight on this. However, the Secretary of State would point out that her Department predicts increased demand in aviation passengers to 2050, which is similar to the Applicant's long-term forecasts [ER 3.4.132]

67. The ExA highlighted that there are inherent uncertainties in undertaking long term forecasts and was therefore satisfied that the Applicant's model sought to factor in these uncertainties as best as it could. Taking into account that the forecasts are based on established practice for air traffic forecasting, including her Department's own methods for projecting aviation forecasts, the ExA concluded that this attracts positive weight. However, due to the inherent uncertainties and long-term nature of the forecasts presented, which in this case is reliant on increased economic growth in the longer term, the ExA considers that the demand forecasts would attract moderate positive weight in favour of making the Order [ER 3.4.133].

The Secretary of State's Overall Conclusions on Need

68. The Secretary of State agrees that great positive weight should be attributed to the need for the Proposed Development in the context of supporting national aviation policy for airports to make best use of existing runways (subject to environmental considerations being addressed) and because of the strategic economic case. The ExA recommended that the demand forecasts would also weigh positively in favour but that the Secretary of State gives moderate weight to this in view of the inherent uncertainties and long-term nature of the forecasts presented. The Secretary of State considers that her focus in making a decision on this Application is not forecasting at the individual or local level, but on the long-term demand for capacity identified in the relevant airport policies and the capacity that would be delivered by the Proposed Development to meet that need. This is because forecasts for individual airports can vary depending on their scope and inputs such as specific local and commercial information which may be of relevance in the short term (UK Aviation Forecasts 2017, paragraph 1.3) Nevertheless, having considered the various representations on this matter and the evidence submitted in support of these representations, the Secretary of State places great weight on the fact that the Applicant is satisfied that the forecasted demand would make the Proposed Development viable, and that it is willing to invest in the expansion of the airport on that basis. Overall, the Secretary of State agrees with the ExA that the need case for the Proposed Development attracts great positive weight in favour of the Order being made (but unlike the ExA, and as set out in the Planning Balance section below, she considers that the need, capacity and socio-economic benefits carry decisive weight in the planning balance) for the following reasons:

- Compliance with MBU policy that the Proposed Development seeks to make best use of its existing runway, not forming an extension of the existing or proposing a new runway.
- The expected socio-economic benefits that the development would bring in terms of job creation and indirect jobs through supply chains associated with the air travel industry.
- Providing increased connectivity which could benefit businesses, leisure, improve the potential for exports, create access to jobs in high value sectors and help to facilitate competition within the aviation sector to the benefit of consumers.
- The contribution the development could make in addressing identified airport capacity pressures in the southeast of England, as set out in the ANPS.
- The contribution to filling the projected passenger numbers in the forecast figures [ER 3.4.134]. However, as already stated it is not the forecasted demand and the take up of this demand that the Secretary of State places great weight on, but the fact that the Applicant is satisfied the Proposed Development is viable and that it is willing to invest its expansion that carries great weight.

69. In accordance with MBU, the OANPS and the ANPS, this weight must be assessed and balanced against the other economic and environmental considerations [ER 3.4.134 and 5.3.2]. Having considered these matters the ExA concluded that the adverse environmental impacts would outweigh the economic and consumer benefits of the Proposed Development [ER 5.3.11]. The Secretary of State disagrees and considers that the economic and consumer benefits the Proposed Development would deliver are so substantial that they would outweigh the adverse environmental impacts identified.

Alternatives

70. The Secretary of State has had regard to the Applicant's assessment of alternatives which is primarily contained within Chapter 3 of the ES [ER 3.5.5] and summarised at ER 3.5.6 – 3.5.10. The Secretary of State notes the obligation to consider alternatives as required by regulation 14(2)(d) of the EIA Regulations and other legal requirements and any policy requiring consideration of alternatives [ER 3.5.4].

Issues Considered

71. The Secretary of State notes the concerns raised by Interested Parties that alternative modes of transport should be encouraged rather than meeting the demand for air travel. The Secretary of State notes the Applicant's response (summarised at ER 3.5.12) and that overall, the Applicant considered that it was unlikely that demand for air travel would be replaced by alternative modes of transport [ER 3.5.12]. Like the ExA, the Secretary of State agrees that Government policy does not seek to reduce demand for air travel and seeks overall to grow the UK's connectivity, as discussed in FttF. The ExA accepted that, based on the content of the forecasts in the Need Case, that the proposed expansion is, in part, intended to serve international destinations, some of which would not be practicable by alternative modes of surface access. Further, the ExA considered that there was no evidence that, should the expansion

not go ahead, potential passengers would choose alternative transport modes rather than to fly from an alternative airport [ER 3.5.13]. The Secretary of State agrees.

72. The Secretary of State has considered the concerns which stated that adopting a multi-terminal approach was inefficient and notes the ExA asked the Applicant whether redevelopment of the existing terminal had been considered as an alternative to a new terminal [ER 3.5.18]. The ExA was satisfied by the explanation given by the Applicant that the existing terminal was somewhat landlocked, constrained by existing airport infrastructure and that it did not progress a single terminal option as it would have been logistically challenging to construct and would have an adverse impact on the operational efficiency of the airport [ER 3.5.19]. The Secretary of State is likewise content.

73. The Secretary of State notes that the ExA queried the consultation which had taken place on the methodology for the alternatives assessment, whether any other factors had informed the choice of alternatives in addition to the Airports Commission Appraisal Framework (April 2014) and asked the Applicant to justify how all the options in Strategic Option 5 would “maintain and where possible improve” the quality of life for Luton’s residents [ER 3.5.20]. The ExA was satisfied with the responses provided by the Applicant as summarised at ER 3.5.21. The Secretary of State is likewise content.

74. The Secretary of State notes that, in response to questions raised by the ExA about whether alternative options had been considered to reduce visual effects, the Applicant advised that there were no viable alternatives to the proposed location of the London Luton Airport Operational Road due to the earthworks slope. The ExA was satisfied with the Applicant’s response [ER 3.5.22]. The Secretary of State concurs.

75. While the Applicant stated that Best and Most Versatile Land (“BMV”) was not considered as a key deciding factor at the early strategic option level, it was considered later at sift 2 as a sub-criterion to the Landscape and Visual Impact Assessment and land use assessment, during the optioneering appraisals [ER 3.5.24]. Like the ExA, the Secretary of State is content with this response and considers BMV land in more detail in the Land Use section of this letter.

76. The Secretary of State notes the ExA explored whether alternative locations for car parking which would not require construction on Wigmore Valley Park had been explored and the Applicant’s response of its consideration of an alternative option, Option 1d, which retained Wigmore Valley Park had been considered but performed badly compared to the other options and was discarded after sift 3. The ExA was satisfied that the Applicant has considered alternative car parking locations in its assessment of options [ER 3.5.26]. The Secretary of State finds no reason to disagree.

77. The Secretary of State has had regard to the representations made by the Friends of Wigmore Park and Stop Luton Airport Expansion who questioned why land at the Airport Business Park on Provost Way could not be used for airport parking provision. Like the ExA, the Secretary of State is satisfied with the Applicant’s response that the area suggested was unsuitable because it was currently in use by the airport operator and would be affected by the construction of the Airport Access Road [ER 3.5.27].

78. While the Secretary of State notes the representations made by Interested Parties including Stop Luton Airport Expansion who suggested that other existing business parks could be expanded so that Wigmore Valley Park would not be required

and its proposed alternative options, like the ExA, she is satisfied with the Applicant's response as summarised at ER 3.5.28.

The Secretary of State's Conclusions on Alternatives

79. The ExA concluded that the assessment of alternatives accorded with the EIA Regulations and the ANPS (paragraph 4.28) and weighed neither for nor against the making of the Order [ER 3.5.29]. The Secretary of State agrees.

Air Quality

80. The Secretary of State notes the Applicant's assessment of construction and operation likely significant air quality and odour effects as set out in Chapter 7 of the ES which concluded that, with mitigation, there would be no significant effects alone or in combination with other projects during construction and operation from site works, surface access or aviation emissions for human or ecological receptors [ER 3.6.27]. The Secretary of State also notes the findings of the Applicant's Equality Impact Assessment which concluded that there would be no air pollution effects on protected characteristics groups on the basis that air quality effects would not be significant [ER 3.6.28]. While the Secretary of State is aware that PM_{2.5} Targets: Interim Planning Guidance was published on 4 October 2024, the Secretary of State notes that this guidance is not required to be applied retrospectively for planning decisions where applications were submitted prior to the publication of the interim guidance.

Construction

Construction dust and emissions

81. The Secretary of State notes the consideration given by the ExA regarding whether 24-hour working, as allowed for in the Code of Construction Practice ("CoCP"), had been sufficiently addressed by the Applicant in the ES [ER 3.6.32]. The Secretary of State agrees with the ExA that the application would have benefited from an explicit assessment of 24-hour air quality effects. However, noting that the Applicant had adopted a conservative worst-case assessment and identified all sites as high risk for dust mitigation, the Secretary of State is content that it would be unlikely that the conclusions on significance would have been different from those assessed [ER 3.6.36].

82. The Secretary of State further notes the consideration given by the ExA to the basis for determining the magnitude of dust effects for the M1 J10 works [ER 3.6.33]. Taking into account the Applicant's response set out in ER 3.6.33, the ExA was satisfied that, with mitigation, the works at M1 J10 would not give rise to significant dust effects and that the assessment represented a reasonable worst case [ER 3.6.37]. The Secretary of State has no reason to disagree.

83. The Secretary of State notes that the ExA asked the Applicant to confirm whether a conveyor belt system to transport materials on site had been considered in its assessment. The Applicant confirmed that while emissions from a conveyor belt system had not specifically been assessed in the ES, contaminated material would not be transported using a conveyor system, conveyors would be likely to be electric and have no local emissions and the original modelling was based on use of dump trucks, which represented a worst case in terms of emissions [ER 3.6.34]. The ExA was satisfied that the assessment of construction vehicle movements rather than a

conveyor operation represented a reasonable worst case [ER 3.6.37]. The Secretary of State is likewise content.

84. In response to the ExA's questions about whether freight consolidation would be used as mitigation, the Secretary of State notes that the Applicant confirmed that its assessment assumed no freight consolidation [ER 3.6.35]. While the Secretary of State has had regard to paragraph 5.40 of the ANPS which lists freight consolidation as a possible mitigation measure, she agrees with the ExA that the lack of a freight consolidation system does not weigh for nor against the making of the Order [ER 3.6.38].

85. Noting that at the close of the Examination, the Joint Host Authorities and Buckinghamshire Council generally agreed with the construction air quality and odour assessments and mitigation proposed [ER 3.6.31] and that the Luton Borough Council's LIP considered that the information provided within the draft Order was sufficient to consider air quality [ER 3.6.30], the Secretary of State agrees with the ExA that the construction stage assessment and mitigation proposals are sufficient for the purposes of decision making. Although the Secretary of State accepts the Applicant's conclusion that such effects are subject to mitigation and not deemed to be significant, she agrees with the ExA that these effects would contribute to a temporary, non-significant worsening of air quality around the construction works areas in all phases compared to the Do-Minimum scenario and that this attracts a little negative weight against the making of the Order [ER 3.6.38].

Surface access

86. The Secretary of State notes the numerous representations regarding the worsening of air quality from increased traffic movements on the affected road network [ER 3.6.39] and that at the close of the Examination, air quality matters were agreed with Buckinghamshire Council [ER 3.6.41]. While Central Bedfordshire Council considered that some additional highway movements could occur within Air Quality Management Areas ("AQMA") in Dunstable, the Secretary of State notes that due to the distance away from the Proposed Development, this was unlikely to be directly impacted [ER 3.6.42].

87. The Secretary of State notes that the ES did not predict any significant air quality effects from traffic movements on the affected road network, although it suggested that pollutant concentrations would tend to worsen in most locations, show little change, or in a limited number of cases show an improvement and that this would be more pronounced for Nitrogen Dioxide ("NO₂") than for particulate matter [ER 3.6.40]. While the Secretary of State appreciates the Applicant's conclusion that effects are not deemed to be significant, like the ExA she considers that such effects would contribute to a non-significant worsening of air quality in proximity to the affected road network in all phases in the "Do-Something" scenario) [ER 2.5.1]. which attracts a little weight against the making of the Order. The Secretary of State has taken account that the ExA were satisfied that the surface access assessment and mitigation proposals are consistent with paragraph 5.33 of the ANPS [ER 3.6.66].

Construction traffic routing

88. The Secretary of State notes that although Chapter 7 of the ES assumed that construction traffic would use the M1 and A1081 to access the Main Application Site, the outline Construction Traffic Management Plan ("oCTMP") assumed some traffic might use the A602/A505 corridor. In response to the ExA's questions regarding how

the assumption had been assessed in the ES, the Applicant confirmed that no allowance had been made for construction traffic on the A602/A505 corridor, but that the small amount of predicted traffic on this corridor and the management and monitoring measures in the Construction Traffic Management Plan (“CTMP”) meant that the Proposed Development would be unlikely to give rise to significant effects on air quality [ER 3.6.43].

89. While the Secretary of State is aware that in the planning consent granted in October 2023 which, subject to a number of conditions, enabled London Luton Airport to increase its capacity to 19mppa (LBCRef: 15/00950/VARCON) [(“P19 permission”) it was accepted that the M1 would provide the best route to access the Airport, she notes that there remained some uncertainty in the ultimate routing of construction traffic and the consequent geographic distribution of air quality effects. The ExA considers that if additional traffic used the A602/A505 corridor this could increase emissions within the Hitchin AQMAs. The ExA noted that Chapter 7 of the ES identified considerable headroom for NO₂ and particulate matter 10 (“PM₁₀”) in Hitchin which meant that it was unlikely the AQMA designations or compliance with legal limits would be affected in any phase even if emissions increased. The ExA considered that in contrast, there was little headroom for particulate matter 2.5 (“PM_{2.5}”) limits in Phase 2b and that there would be the potential for additional traffic to contribute to an exceedance of PM_{2.5} limits in the absence of mitigation [ER 3.6.45]. The Secretary of State concurs.

90. Taking into account that the oCTMP includes specific provisions for traffic routing and timing, and the GCG Framework (Appendix D) air quality monitoring plan also includes monitoring locations in Hitchin which could trigger GCG control measures in the future if required, the ExA found the approach to construction traffic routing would be satisfactory for Phases 1 and 2a and that GCG controls would be in place to avoid the exceedance of air quality limits in Phase 2b. The Secretary of State agrees with the ExA, that this matter is neutral, and weighs neither for nor against the making of the Order [ER 3.6.46].

COVID-19 implications for traffic modelling

91. The Secretary of State has had regard to the ExA’s request for updated traffic modelling to address Government guidance on the implications of COVID-19 for traffic modelling and notes the updated traffic modelling and ‘Accounting for COVID-19 in transport modelling - environmental appraisal’ provided by the Applicant. The Secretary of State notes that while the updated air quality assessment did not identify any significant effects, a general increase in pollutant concentrations was observed for the majority of receptors in the future Do-Something scenarios compared with the baseline [ER 3.6.48]. The Secretary of State agrees with the ExA, who were satisfied that the updated modelling has taken account of COVID-19 effects and provides an appropriate basis for decision making [ER 3.6.50]. In reaching this conclusion, the Secretary of State has considered the questions raised by the ExA and the Hertfordshire Host Authorities regarding the criteria used by the Applicant to screen out road links from further detailed air quality assessment in the COVID-19 environmental appraisal, together with the Applicant’s response that the assessment was based on identifying road links at greatest risk of a significant effect on air quality and that no significant effect has been identified for either of the two road links screened out [ER 3.6.49].

Modelling study area

92. While the Secretary of State acknowledges Transport for London's concerns regarding the modelling study area as summarised at ER 3.6.51, she notes that the study area was agreed as part of the scoping opinion and developed in consultation with stakeholders [ER 3.6.51] and that it was also agreed with the Joint Host Authorities [ER 3.6.52]. Accordingly, the Secretary of State shares the ExA's view that the study area is satisfactory and provides an appropriate basis for decision making [ER 3.6.53].

Impacts on Hitchin AQMA

93. The Secretary of State notes the concerns raised by North Hertfordshire District Council and Hertfordshire County Council regarding the fact that the mitigation proposals for the Hitchin Junctions (Work No. 6e (k to m)) were neither agreed nor in keeping with policy aspirations for active and sustainable travel and suggesting that there was insufficient information to determine whether these measures were deliverable. Additionally, she notes the concerns that the measures might attract additional traffic to the Hitchin AQMAs [ER 3.6.54].

94. In considering the effects on Stevenage Road and Payne's Park AQMAs for the Hitchin junction designs, the Secretary of State has had regard to the additional air quality modelling information for its core planning case provided by the Applicant which demonstrated that the maximum NO₂ and PM₁₀ concentrations were predicted to be well below the annual mean objective of 40µg/metres cubed ("m³") in both the Do-Minimum and Do-Something scenarios, with PM_{2.5} levels also predicted to be below objectives or to experience negligible change between the DM and DS scenarios [ER 3.6.55]. The Secretary of State notes that in the faster growth scenario, pollutant concentrations would increase for all pollutants, but that NO₂ and PM₁₀ levels were expected to remain well within the relevant standards. Further, that a maximum PM_{2.5} concentration of 10.1µg/m³ was identified at a receptor in Phase 2b which was a slight beneficial reduction from the Do-Minimum of 10.2 µg/m³ [ER 3.6.56].

95. The Secretary of State is mindful that paragraph 5.43 of the ANPS states that air quality considerations are likely to be particularly relevant where the Proposed Development is within or adjacent to an AQMA and would change its size or change the exceedances of the limits. Similarly, she is aware that paragraph 192 of the NPPF states that new development in an AQMA should be consistent with the local air quality action plan ("AQAP"), which in the case of Stevenage Road AQMA and Payne's Park AQMA in Hitchin, is the North Hertfordshire District Council AQAP which requires appropriate air quality assessment and mitigation of effects from development, as per Policy D4 of the North Hertfordshire Local Plan [ER 3.6.57].

96. The ExA concluded that based on the submitted junction designs, the Applicant's assessment complied with the requirements of Policy D4 and satisfied paragraph 192 of the NPPF and considered that the Proposed Development was unlikely to give rise to a change in the AQMA size or a new exceedance of limits NO₂, PM₁₀ or PM_{2.5} [ER 3.6.58]. The Secretary of State agrees.

97. In their Statements of Common Ground, North Hertfordshire District Council and Hertfordshire County Council indicated they were in negotiations with the Applicant to change signalised junctions in Hitchin. In light of the potential for the junction designs to change, the ExA recommended that the Secretary of State obtain further information relating to the final junction solutions, how these satisfied local policy ambitions and their effects on the AQMA [ER 3.6.59]. In her further information request dated 2 August 2024, the Secretary of State invited the Applicant and the local

authorities to confirm whether agreement had been reached on the final junction designs at Hitchin and if so, asked them to provide further detail on the changes to the effects in air quality, AQMAs and whether the changes complied with local policy requirements. If no agreement had been reached, the Secretary of State invited the Applicant, North Hertfordshire District Council and Hertfordshire County Council to set out their respective views on what was needed to resolve the concerns.

98. In its response dated 19 August 2024, the Applicant stated that its position remained as it was at the close of the Examination and this was also confirmed by North Hertfordshire District Council and Hertfordshire County Council in their respective responses dated 19 August 2024 who stated that no evidence had been presented by the Applicant which would address their concerns and the design of the junctions remained unacceptable. Given the junction designs in Hitchin remain the same as those considered during the Examination, the Secretary of State remains content with the ExA's conclusions as set out at ER 3.6.58.

99. The Secretary of State notes the representations which highlighted that junction works and road widening would mean a loss of screening roadside vegetation, and this would bring receptors closer to exhaust emissions including on the walking routes used by school children [ER 3.6.60]. The Applicant's air quality assessment considered the impact of junction works and concluded that predicted effects were not significant [ER 3.6.61], and that while air quality would worsen slightly for receptors compared with the Do-Minimum scenario, these effects would not be significant [ER 3.6.63]. The ExA was satisfied with the assessment conclusions but noted that the off-site highway works lacked detail regarding any proposed measures to replace the limited roadside green infrastructure that would be lost during construction. As this would not fully accord with the requirements of paragraph 192 of the NPPF which states that opportunities to improve air quality or mitigate impacts should be identified, including green infrastructure provision and enhancement, the ExA considered that this would attract a very little weight against the making of the Order [ER 3.6.64 – ER 3.6.65]. The Secretary of State agrees.

Surface Access – Conclusions

100. The ExA satisfied that the surface access assessment and mitigation proposals are consistent with the ANPS (paragraph 5.33) requirement to consider surface access emissions and provides an appropriate basis for decision making. The ExA accepted the Applicant's conclusion that such effects would not be significant. However, the ExA considered that such effects would contribute to a non-significant worsening of air quality in proximity to the affected road network in all phases in the Do-Something scenario. The Secretary of State agrees with the ExA that this attracts a little weight against the making of the Order [ER 3.6.66].

Operation

Baseline air quality monitoring

101. The Secretary of State has considered the concerns raised by various Interested Parties regarding baseline air quality monitoring, including those raised by Luton Friends of the Earth who stated that it had placed NO₂ diffusion tubes around Luton on school walking routes during March and April 2018 and the results suggested that limits were being exceeded at two junction locations and levels were elevated at five other locations [ER 3.6.67]. Like the ExA, the Secretary of State is not satisfied that the evidence presented would undermine the Applicant's baseline

monitoring data because it is unclear whether the Friends of the Earth diffusion tube sampling and analysis was undertaken by professional experts or whether the values reported are representative of relevant exposure at receptor locations. In any case, the Secretary of State agrees with the ExA that these results do not represent the future baseline Do-Minimum case, which is the basis for the Applicant's comparative assessment and is predicted to improve in future as engine technology improves (based on DEFRA projections). Noting that the local authorities agreed with the Applicant's approach [ER 3.6.69], the ExA was satisfied that the baseline air quality monitoring provided an appropriate basis for decision making [ER 3.6.70]. The Secretary of State is likewise content.

Modelling assumptions

102. The Secretary of State notes the consideration given by the ExA to a number of basic assumptions in the Applicant's air quality model [ER 3.6.71] and the Applicant's model validation and verification process [ER 3.6.74]. She further notes the questions raised by various Interested Parties in relation to whether additional tanker refueling journeys would be required and had they been assessed [ER 3.6.72], whether pollutants such as O₃ had been adequately considered [ER 3.6.76] and whether a delay in the diesel ban would affect future baseline air quality assumptions [ER 3.6.77]. The Secretary of State has had regard to the Applicant's responses [ER 3.6.71 - 3.6.74 and ER 3.6.76-3.6.77] - and notes that the additional tanker refueling journeys had been assessed in the ES [ER 3.6.72], the method regarding reliance on the assumptions of newer generation aircraft and efficient and cleaner vehicles had been agreed with local councils and was conservative in its assumptions of future road traffic emissions and aircraft types [ER 3.6.73] and the scope of pollutants had been agreed with local authorities, that O₃ is a transboundary pollutant and monitored at the airport along with a wide suite of other pollutants ER 3.6.76].

103. The ExA was satisfied that relevant pollutants had been modelled as required by the ANPS and that the operational air quality model was representative of future conditions [ER 3.6.78]. Noting that the Hertfordshire Host Authorities had no comments on the model verification process and that Luton Borough Council stated that most air quality matters had been agreed [ER 3.6.75], the Secretary of State finds no reason to disagree. In reaching its conclusion the ExA noted the potential for a slight under prediction in the modelling for PM₁₀ and some larger variations in modelled and monitored NO₂ data within or near the Luton AQMA. However, the ExA was satisfied that the conservative assumptions built into the Applicant's model ensured the results were sufficiently representative [ER 3.6.78]. The Secretary of State concurs.

104. The ExA concluded that while air quality effects may not be significant, there would be some deterioration in air quality across the affected road network relative to the Do-Minimum scenario in future years. As this would slow the trajectory of improvement in air quality, the ExA considered this at odds with the NPPF (paragraph 180e) aim that where possible development should help to improve local environmental conditions and found it to be inconsistent with the requirements of the ANPS (paragraph 5.43) to avoid deterioration and so weighed this against the making of the Order. However, as this would not impact on compliance and was not assessed as significant in EIA terms, the ExA afforded this matter a little negative weight [ER 3.6.78]. The Secretary of State agrees.

Impacts on Central Bedfordshire

105. The Secretary of State is aware that in their Statement of Common Ground and LIR, Central Bedfordshire Council were concerned about the lack of detail for predictions of air pollution in Central Bedfordshire, in particular at Luton Hoo and Someries Castle [ER 3.6.79]. The Secretary of State agrees with the ExA that Volume 5 of the ES 5.02 Appendix 7.1 does not allow for receptors to be easily categorised at a local authority level. However, that the EIA regulations do not prescribe how this information should be presented. Like the ExA, the Secretary of State is satisfied that the scope of the assessment in respect of Central Bedfordshire provides an appropriate basis for decision making [ER 3.6.80].

Impacts on athletes - Luton Town Football Club (LTFC)

106. The Secretary of State has had regard to the representation from Stop Luton Airport Expansion in relation to the impact of emissions from the Proposed Development on athletes at Luton Town Football Club [ER 3.6.81]. The Secretary of State agrees with the ExA that the assessment does not identify significant effects in relation to air quality and is satisfied that significant effects on Luton Town Football Club may be excluded [ER 3.6.82].

Ultra-Fine Particulates ("UFP")

107. The Secretary of State notes that several Interested Parties raised concerns regarding aviation giving rise to UFP and that the Hertfordshire Host Authorities signposted the ExA to a 2018 Defra report 'UFP in the UK' which recommended establishing one permanent UFP monitoring site in the vicinity of a major airport [ER 3.6.83].

108. In the absence of legislated standards for UFP, the ExA considered that it would be inappropriate to impose monitoring requirements for UFP and noted the Applicant's commitment to the monitoring of PM_{2.5} emissions which incorporate the UFP size fractions. The Secretary of State agrees and is also satisfied that the assessment has considered relevant pollutants and provides an appropriate basis for decision making [ER 3.6.85].

In-combination climate change assessment

109. The Secretary of State notes the consideration given by the ExA to the potential discrepancy between the embedded design measures in ES Chapter 3 (Table 3.4) (i) and (k)) to reduce the impact of high winds and Chapter 7 (Table 7.11) of the ES which suggested changes to wind speed were not significant because they were of remote likelihood, improbable occurrence, and very low consequence. [ER 3.6.86]. The Secretary of State notes the Applicant's response [ER 3.6.87] and agrees with the ExA that there is inconsistency in the Applicant's position which embeds mitigation measures for high wind resulting from climate change but also concludes that changes to wind speeds are unlikely. The ExA considered that high wind speeds would increase dispersion and reduce pollutant concentrations and was satisfied that the assessment provided an appropriate basis for decision making [ER 3.6.88]. The Secretary of State agrees.

Green Controlled Growth Framework – Air Quality

Transition period

110. The Secretary of State notes that the GCG Framework and requirement 25 of the draft Order make provision for a review of GCG processes within three years from the date that an article 44(1) notice is served, and then on a five yearly basis. The

review would assess whether monitored pollutant concentrations were 20% higher than originally forecast, in which case they could be brought into scope for the GCG Framework [ER 3.6.90].

111. During the Examination, the ExA sought to clarify whether the wording in the Applicant's GCG Framework explanatory note and draft Order meant that this could result in a period of up to 2.5 years before the GCG air quality controls would apply. The Secretary of State notes the concerns raised by LADACAN regarding the lack of controls during the transition period, which they felt could allow the Applicant to increase the number of flights through capacity declarations, without any GCG controls being in place [ER 3.6.92].

112. While the Applicant proposed that the GCG Framework would apply from the first of January in the calendar year following the service of an article 44(1) notice, so that all Thresholds and Limits would apply immediately from that point [ER 3.6.93], the Secretary of State notes that in requirement 21(1) of the draft Order, this period was reduced [ER 3.6.94]. The ExA concluded that the Applicant's commitment to installing air quality monitoring six months in advance of serving notice under article 44(1) was not secured and that although the Outline Operational Air Quality Plan secured monitoring following the service of notice, it was capable of amendment under requirement 2 of the draft Order. The Secretary of State concurs. Like the ExA, the Secretary of State considers that requirement 21 of the draft Order would allow a period of approximately two years to elapse before monitoring data was available to inform whether mitigation would be necessary under the air quality component of the GCG Framework [ER 3.6.97]. The ExA considered that although air quality effects were not determined to be significant, there was some uncertainty in the phasing of development, growth and consequent emissions. To ensure that effective air quality mitigation measures would be in place the ExA suggested amendments to the wording of requirement 21 to ensure that air quality monitoring would be in place and effective prior to serving article 44(1) notice [ER 3.6.98]. The Secretary of State is content with the proposed wording and agrees with the ExA that with this additional wording, the Proposed Development could operate GCG air quality mitigation measures from the point of serving an article 44(1) notice, and this would therefore not weigh against the case for the Proposed Development [ER 3.6.99].

Short-term air quality effects, monitoring and emissions inventories

113. The Secretary of State notes the concerns raised by the Hertfordshire Host Authorities who recommended the inclusion of short-term limits in the GCG Framework, particularly for PM_{2.5}, and suggested that the World Health Organisation interim target three for 24-hour mean concentration should be adopted. The Secretary of State also notes the concerns raised by Transport for London and Harpenden Sky who advocated for the adoption of World Health Organisation guideline values for PM_{2.5} [ER 3.6.100]. In response the Applicant stated that monitored and modelled annual mean concentrations of NO₂, PM₁₀ and PM_{2.5} did not exceed the short-term standards [ER 3.6.101]. Like the ExA the Secretary of State is satisfied that the GCG Framework Thresholds and Limits reflect relevant UK legal obligations for air quality, consistent with the requirements of the ANPS and NPSNN, and agrees with the ExA that there is no specific policy or legislative requirement to adopt World Health Organisation targets [ER 3.6.112].

114. In terms of monitoring, the Hertfordshire Host Authorities did not agree with the Applicant's choice of indicative monitoring for PM₁₀ and PM_{2.5} on the basis that it did

not meet the relevant British Standards for monitoring and suggested that a Palas Fidas 200 dust monitor would be more appropriate [ER 3.6.103]. The ExA explored the Applicant's calibration regime for air quality monitors and whether it would conform with the Environment Agency's Monitoring Certification Scheme (MCERTS) standards [ER 3.6.104] and a summary of the Applicant's reasons for using indicative monitoring rather than a Defra equivalent reference method ("reference MCERTS") for continuous ambient monitoring is set out at ER 3.6.105 to ER 3.6.106.

115. The Secretary of State notes that the Hertfordshire Host Authorities and Joint Host Authorities sought real time air quality controls and a more adaptive approach. However, this was opposed by the Applicant on the basis that Thresholds and Limits were based on an annual objective and measured using diffusion tubes that would require bias adjustment, and it therefore committed to provide near real time open-source data from the continuous monitoring system, [ER 3.6.108].

116. The Secretary of State agrees with the ExA that while reference MCERTS monitoring equipment would provide the greater assurance that air quality measurements were robust, due to the lack of significant effects identified in ES Chapter 7; as GCG Framework Appendix D provides for a DEFRA equivalent reference monitor at one GCG monitoring location [ER 3.6.106] and taking into account the Applicant's commitment to real time reporting, the Applicant's proposed monitoring is sufficient for the purpose of decision making [ER 3.6.112].

117. The Secretary of State has had regard to the consideration given by the ExA regarding the option of securing a monitoring plan requirement [ER 3.6.110]. However, taking into account that Luton Borough Council were satisfied with the approach to air quality monitoring and did not consider such a requirement was necessary [ER 3.6.111], the Secretary of State is content that a monitoring plan requirement is not necessary.

Faster growth contours

118. While the Secretary of State notes that Transport for London advocated that GCG limits "should be further tightened, currently based on a core forecast with additional headroom" [ER 3.6.113], having regard to paragraph 5.42 of the ANPS and paragraph 5.10 of the NPSNN which emphasises the need to comply with legal obligations for air quality, the Secretary of State agrees with the ExA that the Applicant has complied with legal obligations and that the proposed GCG Framework controls are over and above the minimum requirements for mitigation, given that the ES did not identify significant air quality effects. The Secretary of State is also satisfied that the controls are sufficient for the purposes of decision making [ER 3.6.114].

In-scope locations and percentage contributions

119. The Secretary of State has had regard to the Applicant's approach to determining representative ("in-scope") locations for the large number of air quality receptors identified in the ES [ER 3.6.116], and the queries raised by the ExA regarding whether the lack of in scope locations in Phase 2a meant that the GCG Framework provided no limits on emissions at all. The Secretary of State notes the Applicant's response which stated that its assessment demonstrated negligible impact across the three pollutants in Phase 2a, meaning that no locations needed to be in scope, but the review process could bring locations in scope if the 20% threshold were exceeded [ER 3.6.119].

120. The Secretary of State further notes the Applicant's use of a '5% above the percentage contribution' threshold to determine when pollutant contributions should be subject to GCG Framework processes [ER 3.6.115] which the Applicant stated reflected the practical constraints in monitoring airport contributions to air quality and isolating that from general background situations and represented a buffer [ER 3.6.117]. The 5% allowance was explored by the ExA [ER 3.6.118 and ER 3.6.121] who had reservations that 5% percentage contribution and 20% greater than modelled thresholds could create headroom for the Applicant that reduced the likelihood of a GCG air quality control being implemented. However, the ExA concluded that in light of the assessment conclusions of no likely significant air quality effects and in the absence of comment from the local authorities [ER 3.6.126], it was satisfied that the contribution levels were reasonable as part of the backstop control measure [ER 3.6.127]. Noting the Applicant's assurances that the GCG Framework was designed to ensure proactive management of effects when a threshold or limit was exceeded [ER 3.6.118] and that 5% was also consistent with Institute of Air Quality Management/Environmental Protection UK significance bands [ER 3.6.121], the Secretary of State also agrees. The Secretary of State also agrees with the ExA that requirement 19 of the ExA's recommended DCO securing this '5% greater than modelled' threshold should be retained [ER 3.6.121 and Table 20: the ExA's recommended changes to the draft DCO].

121. The Secretary of State notes the questions raised by the ExA regarding the progress made by the Applicant towards the use of Automatic Number Plate Recognition (ANPR) which the original GCG Framework (Appendix D) suggested would be used to establish vehicle movements to the Airport to inform the assessment of the proportional contributions of London Luton Airport to emissions [ER 3.6.123 - 124]. The Applicant clarified that it did not intend to establish an ANPR monitor network from the outset but that it was one method that could be used and over the lifespan of the Proposed Development other methods might be available [ER 3.6.124]. The Secretary of State notes the position of Luton Borough Council who stated it did not require ANPR data but recognised that it could be useful [ER 3.6.124] and agrees with the ExA that although the use of ANPR data from the outset would assist in determining the Airport's proportional contribution to pollutant concentrations, other methods may be available to achieve this [ER 3.6.128].

122. While the Secretary of State has had regard to the concerns raised by Central Bedfordshire Council regarding the extent of ANPR coverage and the lack of monitoring in both Central and South Bedfordshire [ER 3.6.125], she notes that three monitoring locations are on the border with Central Bedfordshire and the Applicant's assessment did not identify significant effects in air quality in South Bedfordshire that would require any further assessment [ER 3.6.128]. In the absence of comments from other local authorities on proportional contributions, the ExA was satisfied with the proposed approach [ER 3.6.128]. The Secretary of State is likewise content.

123. Overall, the Secretary of State agrees with the ExA that the GCG Framework monitoring controls are acceptable and as they contribute towards compliance with relevant limit values for pollutants, they are therefore consistent with the requirements in paragraph 192 of the NPPF and the ANPS. The ExA concluded that the controls were sufficient for the purposes of decision making [ER 3.6.129]. The Secretary of State has no reason to disagree.

Mitigation toolbox

124. The Secretary of State notes that the GCG Framework explanatory note refers to a “toolbox of measures” to mitigate air quality effects. The Secretary of State has had regard to the concerns raised by the Hertfordshire Host Authorities who considered that the measures would be retrospective and those of other Interested Parties who questioned the ability of the airport operator to deliver them. The Secretary of State notes the clarification sought by the ExA regarding how many of the mitigation measures proposed for air quality in the Outline Operational Air Quality Plan were committed [ER 3.6.130] together with the Applicant’s response [ER 3.6.131].

125. The ExA was satisfied that the Outline Operational Air Quality plan sets out relevant measures to mitigate operational air quality effects as supported by the Framework Travel Plan surface access measures. The ExA considered that some uncertainty remained regarding the precise mitigation measures that would be employed if GCG air quality limits were exceeded. However, the ES identified no significant air quality effects which meant such measures would be an additional backstop, and the duration of the expansion created a degree of uncertainty that requires some flexibility [ER 3.6.132]. The Secretary of State finds no reason to disagree.

126. While noting that mitigation could be retrospective, the ExA considered that the Level 1 and Level 2 Thresholds in the GCG Framework would act as a proactive measure to avoid potential exceedances. As an exceedance would prevent further growth, the ExA considered that this would act as an incentive for the Applicant to resolve an exceedance in a timely fashion. The Secretary of State agrees. Like the ExA, the Secretary of State is satisfied that the proposed approach would achieve its aims and is consistent with national policy requirements to mitigate effects and is sufficient for the purpose of decision making [ER 3.6.133].

Review

127. The Secretary of State is aware that the review process would be triggered within 6 months of any new legal limits coming into force and notes the consideration given by the ExA to the wording in the GCG Framework and its concern that this could potentially mean that the Applicant would not need to comply with UK legislation [ER 3.6.134]. The Secretary of State notes the Applicant confirmed that this was not its intention together with its suggestion that the wording within the GCG Framework should be changed to state that a review would be triggered “within six months of new legal limits being published” rather than “within six months of new legal limits coming into force” [ER 3.6.135]. The Secretary of State agrees with the ExA that the Applicant’s approach to the review of limits is satisfactory. As the GCG Framework retains both forms of wording, the ExA recommended that the Secretary of State obtain an updated GCG Framework that consistently refers to “within six months of new legal limits being published” [ER 3.6.136]. As such, the Secretary of State has included a requirement the Order, which sets out that the GCG Framework will be subject to these amendments.

Green Controlled Growth Framework – Air quality - conclusions

128. Like the ExA, the Secretary of State is satisfied that the GCG Framework provides a back stop for air quality effects, and combined with measures in the mitigation route map, the outline Operational Air Quality Plan and Framework Travel Plan, provides an appropriate basis for controlling emissions into the air from the Proposed Development. The Secretary of State agrees with the ExA that this is

consistent with mitigation requirements in the ANPS, NPSNN and NPPF and is sufficient for the purposes of decision making [ER 3.6.137].

Water Treatment Plant odour

129. The ES concluded that the magnitude of odour impacts would be slight adverse and not significant and that the Water Treatment Plant would not be a significant source of odour [ER 3.6.139]. The Secretary of State notes that the ExA considered that there was a lack of clarity regarding the Water Treatment Plant design and the potential for odour effects to arise from the water treatment plant [ER 3.6.138] and uncertainty over in the significance of odour effects arising on amenity in Wigmore Valley Park, which meant there was a potential that an additional significant community effect could occur [ER 3.6.140]. The Secretary of States notes the enquiries made by the ExA regarding how the Applicant would determine whether mitigation was required [ER 3.6.141]. The Applicant confirmed that the final design would be subject to an Environmental Permit and that the Environment Agency would not permit a site that would result in significant impact. Further, she notes that Luton Borough Council stated that the Environmental Permit limits were usually stringent and applied at a site boundary [ER 3.6.142]. The ExA placed reliance on the permitting process to avoid significant odour effects from the Waste Treatment Plant [ER 3.6.145]. The Secretary of State is content with this approach.

130. During the Examination the Applicant submitted a change request to add an alternative drainage solution, discharging effluent to the Thames Water sewer to avoid the risk of odour from the on-site sludge handling facilities. The Applicant sought flexibility to continue with both disposal options. The Secretary of State is aware that at the close of the Examination, the Applicant and Thames Water Utilities Ltd had reached an agreement regarding protective provisions, but that the accommodation of foul drainage was potentially subject to upgrades to the existing treatment works that had not been budgeted for [ER 3.6.143]. The Secretary of State agrees with the ExA that the discharge of foul drainage to the Thames Water Utilities Ltd sewer would remove the potential odour source and avoid odour effects on Wigmore Valley Park [ER 3.6.145].

131. The ExA concluded that odour effects attracted a little negative weight against the making of the Order [ER 3.6.145]. The Secretary of State has no reason to disagree.

Fuel odour, fuel dumping and Volatile Organic Compounds

132. The Secretary of State has had regard to the representations which raised concerns regarding fuel odour and the health impact of inhaling Volatile Organic Compounds [ER 3.6.146]. The Secretary of State notes that the Applicant confirmed that fuel odour was assessed in accordance with the Institute of Air Quality Management guidelines and included sniff testing and Volatile Organic Compounds monitoring, and that its assessment concluded that there would be no exceedances of environmental limits and no likely significant effects [ER 3.6.148].

133. The ExA acknowledged that fuel odour effects arose in Luton but stated that it had not seen any additional evidence that demonstrated that the Applicant's findings on likely significant effects from fuel odour or Volatile Organic Compounds were incorrect. The Secretary of State has no reason to disagree. While the ExA was satisfied that the odour reporting process (as agreed with Luton Borough Council) provided an appropriate mechanism for the monitoring and control of fuel odour in the

future [ER 3.6.153], taking into account that in the Applicant's professional opinion fuel odours were most likely to relate to operational ground movement [ER 3.6.148], it considered that that in spite of mitigation, the incidence of odour could potentially increase due to an increase in aircraft ground movements. Accordingly, the ExA considered that this attracted a little negative weight against the making of the Order [ER 3.6.153]. The Secretary of State concurs.

134. The Secretary of State has considered the concerns raised regarding fuel dumping, including the representation which suggested that fuel dumping occurred regularly over Stockwood Park. The Secretary of State notes the consideration given to this issue by the ExA, the responses from Hertfordshire Host Authority, North Hertfordshire District Council [ER 3.6.150] and the Civil Aviation Authority who emphasised the rarity of fuel dumping and that this was only required for essential aircraft safety reasons and subject to procedures coordinated with Air Traffic Control [ER 3.6.151]. Aside from anecdotal evidence, the Secretary of State notes that only one documented incidence of suspected fuel dumping was presented to the Examination which supports the CAA observation that incidents are infrequent. Accordingly, the Secretary of State agree with the ExA that this matter is neutral and weighs neither for nor against the making of the Order [ER 3.6.152].

Other matters

135. Like the ExA, the Secretary of State has considered a number of additional issues raised by local residents. However, as no technical or substantive evidence was presented in respect of these matters, the ExA can give these matters negligible weight [ER 3.6.154]. The Secretary of State agrees with this conclusion.

The Secretary of State's Conclusions on Air Quality

136. The Secretary of State agrees with the ExA that the Applicant has considered an appropriate range of pollutants and is satisfied that the Applicant's construction and operational air quality assessments are sufficient for the purpose of decision making. While the ExA had some reservations regarding the GCG Framework and whether the Proposed Development would ever be deemed to have triggered the GCG air quality controls, it was satisfied with the Applicant's proposed mitigation measures. The Secretary of State is likewise content and agrees with the ExA that with mitigation in place there would still be a non-significant increase in emissions and odour to air, and that this increase would be below the limit values and would not affect compliance [ER 3.6.155].

137. While the Secretary of State notes that at the close of the Examination the Joint Host Authorities and Buckinghamshire Council were broadly content with the air quality and odour assessments, its conclusions and proposed mitigation measures, many other Interested Parties remained of the view that the Proposed Development should not be granted because any increase in pollutants would exacerbate the existing poor air quality in Luton [ER 3.6.156].

138. Like the ExA, the Secretary of State has had regard to Policy LLP6(B)(ii) which requires that Airport expansion proposals 'contribute to achieving national aviation policies' and the requirements of MBU, APF, ANPS and the NPSNN, and agrees that the Applicant's assessment demonstrates that the Proposed Development meets the requirement to assess future air quality, odour and dust effects, including from surface access and would not result in breaches of legal obligations for air quality. Further, the Secretary of State is content that the proposed mitigation measures during

construction and operation are acceptable and have been subject to appropriate consultation with communities and stakeholders, including during the Examination [ER 3.6.157].

139. The Secretary of State notes that aside from the Applicant's approach to short-term emissions limits and monitoring which remained not agreed with the Hertfordshire Host Authorities, the local authorities agreed with the proposed operational mitigation measures, including for surface access measures. The ExA was satisfied with the Applicant's reasoning for focusing on the assessment of long-term emissions and found that the Applicant's approach fulfilled the requirements of the ANPS and was sufficient for the purpose of decision making [ER 3.6.158]. The Secretary of State concurs.

140. The Secretary of State has had regard to the requirements of the ANPS (paragraphs 5.42 to 5.238) and NPSNN (paragraphs 5.6 to 5.15 and 5.84 to 5.89) with regard to decision making in relation to odour and dust and is mindful that she must consider whether there is any justification for a defence of statutory authority against nuisance claims or disapply such a defence. Article 47 of the draft Order contains a defence to proceedings in respect of statutory nuisance which addresses dust and odour. The ExA concluded that the necessary steps to reduce the risk of nuisance events have been taken, that this provision was not a buffer against the consequences of poor practice and that appropriate provision against circumstances where unforeseen but unavoidable nuisance occurs has been made [ER 3.6.159]. The Secretary of State finds no reason to disagree.

141. Like the ExA, the Secretary of State considers that the Applicant's proposed mitigation measures are consistent with the measures outlined in 'Aviation 2050' and seek to minimise local air quality emissions and also that the requirements of the NPSNN (paragraph 5.10) and the Planning Practice Guidance for Air Quality have been satisfied by the Applicant's assessment which takes account of updated legislation relating to fine particulate matter. The Secretary of State agrees with the ExA that the Applicant's assessment is sufficient for the purpose of decision making [ER 3.6.160].

142. The Secretary of State notes the slight deterioration in air quality below the relevant limit values is predicted for receptors (including the AQMAs in Hitchin) in the Do-Something scenario compared to the Do-Minimum scenario and agrees with the ExA that this does not fully accord with the objectives of paragraph 180e of the NPPF that development, where possible, should help to improve local environmental conditions such as air quality, or paragraph 5.43 of the ANPS. Accordingly, the Secretary of State agrees with the ExA that this weighs against the making of the Order. However, as the effects were not identified to be significant by the Applicant, nor would they affect compliance, the Secretary of State agrees with the ExA that the deterioration on air quality attracts a little negative weight and is satisfied that as such effects are not significant air pollution and would not give rise to significant differential effects on groups with protected characteristics [ER 3.6.161].

143. The Secretary of State had regard to paragraph 191 of the NPPF which requires that decisions ensure that new development is appropriate for its location taking into account the likely effects of pollution on health and living conditions and notes the consideration given by the ExA to the representations which suggested that the location of the Proposed Development was inappropriate for expansion due to the disproportionate effect it had on larger local pollution than other airports. Like the ExA,

the Secretary of State has some sympathy with comments regarding population exposure and the disproportionate effect this Airport has compared to other airports, but considers that the location of the Proposed Development is dictated by the existing Airport and in light of the findings regarding significant effects, the Secretary of State agrees that the Proposed Development would be appropriate for its location [ER 3.6.162].

144. The Secretary of State has had regard to paragraph 192 of the NPPF and agrees with the ExA that the Proposed Development is consistent with North Hertfordshire District Council's Air Quality Action Plan. However, as off-site highway improvement proposals in Hitchin lack mitigation for Green Infrastructure loss, that this weighs against the making of the Order. Due to the relatively small area of loss, the Secretary of State agrees with the ExA that this should attract a very little negative weight [ER 3.6.163].

145. The Secretary of State notes the relevant policy considerations [ER 3.6.164-165] and agrees with the ExA's conclusion that the Proposed Development would be consistent with local policies [ER 3.6.165]. Although the ExA did not consider the Proposed Development would meet the requirements of St Albans District Local Plan for the reasons set out at ER 3.6.166, it considered this policy to be out of date and as such, concluded that this would attract very little weight in light of the national policy position in MBU [ER 3.6.166]. The Secretary of State finds no reason to disagree and agrees that, overall, the effects on air quality attract a little negative weight against making the order [ER 3.6.167].

Biodiversity

146. The Secretary of State is aware that the Applicant considered a range of impacts to ecological receptors including habitats and species of principal importance, nationally designated sites, ancient woodlands, veteran trees (irreplaceable habitat) and sites of local importance. The ExA's consideration of these and other receptors is found at ER 3.7. The main issues considered by the ExA are:

- operational air quality effects
- mitigation of habitat loss at wildlife sites through replacement land and habitat creation
- duration of adverse effects from habitat loss
- orchid translocation
- Winch Hill Wood County Wildlife Site and Local Wildlife Site and ancient woodland inventory site
- Irreplaceable habitats including ancient woodland and veteran trees

Biodiversity Net Gain

Operational air quality effects

147. The Applicant stated that the assessment of air quality was undertaken in accordance with guidance produced by Natural England and Design Manual for Roads and Bridges (DMRB) [ER 3.7.21] and during the Examination Natural England confirmed that they agreed with the appropriateness of applying the approach advocated in the DMRB in the assessment of air quality impacts, [ER 3.7.34, REP4-198, Question BIO.1.2]. The Secretary of State agrees with the methodology applied.

148. During the Examination the Secretary of State acknowledges that Natural England had requested additional information from the Applicant regarding their assessment of air quality impacts on 5 Sites of Special Scientific Interest (“SSSI”) (namely Dallow Downs and Winsdon Hill SSSI, Cowslip Meadow SSSI, Wain Wood SSSI, Galley and Warden Hills SSSI, and Smithcombe, Sharpenhoe and Sundon Hills SSSI) [ER 3.7.34, paragraph 2.2 of RR-107]. From the Applicant’s assessment it was concluded that construction activities and operational air quality impacts will have no likely effects on the designated features of Nationally Designated Sites [ER 3.7.12]. Natural England confirmed it was content with the assessment of air quality impacts and had no further concerns regarding the impact on SSSI [ER 3.7.34].

149. The Applicant identified temporary minor adverse effects on 17 locally designated sites from air quality impacts, including Winch Hill Wood County Wildlife Site. Whilst accepting the additional air quality impact on these sites, the Applicant concluded that the areas affected were often small and already subject to edge effects from roads and surrounding agriculture, which has reduced the botanical interest of the affected areas; the addition would be a small proportion of this and presents little potential for further change. The Applicant further added that long-term management of these sites and removal of land from agricultural production would improve their condition in the long-term [ER 3.7.21].

150. The Secretary of State notes that a number of interested parties raised the impact of nitrogen deposition in relation to impacts on ancient woodland, plant, fungi and lichen growth, the creation of the replacement habitat, and the proposed removal of land from agricultural production to counterbalance the modelled nitrogen deposition on protected habitats and species [ER 3.7.35 - 3.7.38].

151. The Secretary of State acknowledges the ExA’s conclusion that air quality at non-statutory designated sites would deteriorate, but that the increase in deposition would be small, that many of the ecological effects would already have taken place and that the Applicant’s assessment is highly likely to be conservative in the long-term, given the anticipated shift to EVs [ER 3.7.39]. The Secretary of State accepts the ExA’s conclusion and concludes that the air quality at nearby wildlife sites would deteriorate, although this would be unlikely to be to the extent that significant adverse effects would arise due to elevated nitrogen levels [ER 3.7.95].

Mitigation of habitat loss at wildlife sites through replacement land and habitat creation

152. Table 8.17 of Chapter 8 of the ES concluded that there will be a major significant adverse effect on Wigmore Park County Wildlife Site in that almost the entire 15.4 hectares that make up this Wildlife Site would be lost during construction with one remaining hedgerow being incorporated into the provisions of open space [ER 3.7.14]. The Applicant concluded that there would be a moderate significant adverse effect on Dairyborn Scarp District Wildlife Site (loss of circa 1.3 hectares of the site for the construction of the Airport Access Road and overhanging woodland may need to be cut back) and Luton Parkway Verges District Wildlife Site (a worst-case loss of circa 0.21 hectares of the site for construction in the short term) [ER 3.7.15].

153. The loss of 98.7% of Wigmore Park County Wildlife Site and loss of habitat at Dairyborn Scarp District Wildlife Site (20%) and Luton Parkway Verges District Wildlife Site (37%) will result in impacts on priority habitats and species including arable field margins, lowland calcareous grassland, hedgerows, lowland mixed deciduous

woodland and certain invertebrates (i.e. picture-winged fly, the set-aside downy-back beetle and the dingy skipper butterfly) [ER 3.7.22 and AS-027 Table 8.17, ER 3.7.26, RR-1079].

154. The Secretary of State notes paragraph 5.102 of the ANPS which states that sites of regional and local biodiversity interest have a fundamental role to play in meeting overall national biodiversity targets and that adequate compensation should always be considered, and ecological corridors and their physical processes should be maintained as a priority to mitigate widespread impacts [ER 3.7.8]. The Secretary of State notes the discussions had regarding the terminology, 'embedded mitigation' or 'compensatory habitat' used to describe the habitat creation within the open space adjacent to Wigmore Park County Wildlife Site [ER 3.7.40-3.7.42]. The Secretary of State is in agreement with the ExA that the provision of replacement habitats that neither avoids nor reduces the occurrence of negative impacts at source would, in general, be more accurately assessed as 'compensation' [ER 3.7.41].

155. The Secretary of State notes that paragraph 5.95 of the ANPS suggests that the application of a 2:1 ratio for compensation is the minimum requirement [ER 3.7.43], and agrees with the ExA that the quantum of replacement land proposed by the Applicant would meet the 2:1 ratio for loss of the County Wildlife Site and District Wildlife Sites [ER 3.7.46]. The Applicant aims to provide 47.6 ha of habitat creation as part of the provision of open space adjacent to Wigmore Park County Wildlife Site, with an additional small area at Dairyborn Scarp District Wildlife Site [ER 3.7.17].

156. In addition to paragraph 5.95 of the ANPS, it is noted that there are other mechanisms for establishing ratios and that other factors such as the location and quality of any compensation land is of key importance. In this regard, habitat creation, where required, should be focused on areas where the most ecological and ecosystems services benefits can be realised [ER 3.7.43].

157. The Applicant has committed to a range of appropriate habitat creation and enhancement, which the ExA noted would be in proximity to the habitats lost, as well as long-term management of these habitats [ER 3.7.47]. On this basis, the ExA was satisfied that the policies in the ANPS and Luton Local Plan ("LLP") LLP28 are met for the habitat loss at County Wildlife Site and District Wildlife Sites [ER 3.7.54] and the Secretary of State notes that the ExA is satisfied with the compensation that is to be provided for the loss of habitat and its location [ER 3.7.52 and 3.7.53]. The Secretary of State sees no reason to disagree with this, despite disputes over the clarification of the provided compensation .

158. In addition, the Secretary of State notes that the Applicant proposes additional landscape mitigation through approximately 43ha of habitat creation to the east of the replacement open space [ER 3.7.18].

Duration of adverse effects from habitat loss

159. The Secretary of State notes the discussions during the Examination regarding the time lag between habitat creation and the replacement habitat being fully established [ER 3.7.55]. It is acknowledged that a delay in maturation of replacement habitat is inevitable and it was accepted by the ExA that the effects of habitat would be adverse for a long period of time when measured in terms of species' life and up to 30 years for trees [ER 3.7.55]. The Secretary of State has noted that the ExA disagreed with the Applicant's approach and conclusion that the effects on wildlife sites and habitats would be temporary, on the basis that it would take between 10 and

30 years for the broadleaved woodland to re-establish to an equivalent quality [ER 3.7.56]. The Secretary of State agrees with the ExA.

160. Furthermore, there would be a moderate adverse impact from the loss of habitat and foraging experienced in species of principal importance (bats, invertebrates, reptiles and mammals) while replacement habitats matured, and there would be an adverse effect from the loss of habitat for wintering, breeding and Schedule 1 birds until replacement habitats matured [ER 3.7.57].

161. Paragraph 5.105 of the ANPS states that where there would be harm to habitats and species of principal importance, consent should be refused unless the benefits (including need) clearly outweigh the harm [ER 3.7.58]. The Secretary of State is aware that the compensatory habitat would not be mitigated in the immediate to short term loss of these habitats and would take a long time to develop into the quality of the existing habitat and could therefore have adverse and significant effects on habitats and species of principle importance in the interim. If it is concluded that the overall public benefits of the Proposed Development are established, the ExA stated that harm to habitats and species of principal importance would attract a little negative weight against the making of the Order. The Secretary of State agrees and considers this further in the conclusion paragraph below.

Orchid translocation

162. Several Interested Parties submitted representations raising concerns about the loss of orchids e.g. [RR-0633], [RR-1448] and [RR-0633] and the likelihood of a successful translocation to the replacement habitat, based on the soil type required and the unsuccessful orchid translocation trial in 2019 [RR-0633]. The ExA and the Secretary of State are satisfied by the argument that natural colonisation is likely to occur in the replacement habitat due to the natural spread of orchid in proximity to the proposed site, which has been observed in baseline surveys. In addition, the Applicant has considered the failings of the 2019 translocation and is willing to use the appropriate seed mix at the replacement habitat site if required. The ExA and the Secretary of State recognise the possible short-term effects on the population of orchids at the Wigmore Park County Wildlife Site but are satisfied that there would be no adverse effects in the longer term and, given that there are no specific protections for those species, concurs that the effects are not significant [ER 3.7.60-3.7.63].

Winch Hill Wood County Wildlife Site/District Wildlife Site/Local Wildlife Site and ancient woodland inventory site ¹

163. The Secretary of State acknowledges the concerns raised by the Forestry Commission and the Woodland Trust regarding Winch Hill Wood County Wildlife Site, District Wildlife Site and Local Wildlife Site and ancient woodland inventory site and the potential impacts on the site that could arise from nearby earthworks, lighting, car parking, severance, vibration, noise, fumes, reduction in air quality and hydrological changes [ER 3.7.64].

164. The Secretary of State agrees with the ExA's conclusion that although the construction and operational effects would likely be negative, the woodland would not

¹ As explained in Chapter 8 of the ES (AS-027), local authorities use different terms to refer to Winch Hill Wood. It is referred to as a County Wildlife Site/District Wildlife Site by Bedfordshire County Council and Luton Borough Council, and as a Local Wildlife Site by Hertfordshire County Council.

suffer from significant cumulative or in combination effects when the proposals for mitigation and long-term management of the site are taken into account [ER 3.7.100]. The Secretary of State agrees that this matter does not weigh for nor against the Proposed Development [ER 3.7.100 and 5.2.86].

Irreplaceable habitats including ancient trees and veteran trees

165. The Secretary of State notes additional information supplied by the Applicant [REP6-066] that any retained ancient or veteran trees at the site were generally over 100 m from any earthworks [ER 3.7.75]. The Secretary of State agrees with the ExA's conclusion that there is unlikely to be significant harm to retained ancient and veteran trees and this matter is of neutral weight which weighs neither for nor against the making of the Order [ER 3.7.76].

166. The Secretary of State notes the proposed loss of veteran Ash tree (T343). The Secretary of State is aware of Ash Dieback disease and acknowledges that the Applicant's proposed compensation measures for the loss of T343 will be reviewed prior to attempted translocation of the tree [ER 3.7.79].

167. The Secretary of State also notes the discussions around T343 during the Examination and the concerns raised by the Woodland Trust that translocation of the tree may not be successful [ER 3.7.77]. In line with the ExA, the Secretary of State concludes that it is likely that T343 would suffer loss or deterioration [ER 3.7.85].

168. The Secretary of State notes paragraph 5.103 of the ANPS which states that veteran trees found outside ancient woodland are particularly valuable for biodiversity and their loss should be avoided and paragraph 186 of the NPPF which states that development resulting in the loss or deterioration of irreplaceable habitats should be refused, unless there are wholly exceptional reasons (for example nationally significant infrastructure projects), where the public benefit would clearly outweigh the loss or deterioration of habitat, and a suitable compensation strategy exists [ER 3.7.82].

169. The Secretary of State notes that there is not a specific compensation strategy in place for the loss of T343. The Secretary of State does however acknowledge and agrees with the ExA that as the Applicant is committed to planting new native woodland and specimen trees in the Outline Landscape and Biodiversity Management Plan [AS-029], albeit this is not specifically linked to the loss of T343, that on balance, given the extent of new native tree planting proposed, appropriate compensation would be provided [ER 3.7.84].

170. The Secretary of State agrees with the ExA that the likely loss or deterioration of T343 as a result of the Proposed Development would be a matter of a little negative weight against the development if it is concluded that the overall public benefits of the scheme are established. If the net benefits of the proposal are not established, then this would be a matter for refusal [ER 3.7.101].

Biodiversity Net Gain ("BNG")

171. The Secretary of State acknowledges that the Applicant intends to provide over 10% BNG through habitat creation [ER 3.7.29] and that by the close of the Examination the Host Authorities agreed that delivery of a 10% net gain would be achievable and that the proposals in the Strategic Landscape Masterplan would have a positive impact on biodiversity [ER 3.7.31].

172. The Secretary of State acknowledges Natural England's concerns in regard to achieving a BNG [ER 3.7.87] but as noted by the ExA's, BNG is not currently a legal requirement for NSIP and there are no other definitive policy requirements as to the quantum of gain [ER 3.7.88].

173. The Secretary of State is satisfied that the development will meet the requirements of the NPPF, the ANPS and LLP Policy LLP28 in relation to providing net gain [ER 3.7.91].

Secretary of State's conclusion on Biodiversity

174. The Secretary of State is satisfied that the Applicant's assessment is sufficient for the purposes of decision making [ER 3.7.92]. The Secretary of State is also satisfied that the CoCP would ensure construction impacts on biodiversity will be minimised in accordance with paragraph 180 of the NPPF [ER 3.7.94].

175. By the close of the Examination there were no outstanding matters in respect of biodiversity in the Statement of Common Ground with the Host Authorities [REP11-033], [REP11-035], [REP11-095], [REP11-097], [REP11-099]. All agreed that delivery of BNG would be achievable and that the proposals in the Strategic Landscape Masterplan [APP-172] would have a positive impact on biodiversity [ER 3.7.31]. Natural England also had no outstanding issues in relation to biodiversity as represented in their Statement of Common Ground [REP9-040] and in Letters of No Impediment for bats and badgers [ER 3.7.32].

176. The Secretary of State notes biodiversity factors weighing against the grant of development consent include; the significant time lag for compensation habitat to mature and the impact this has upon habitats and species of principal importance during this period, and the loss/ deterioration of irreplaceable habitat.

177. As set out in the planning balance section below, the Secretary of State is satisfied that there is a need for the Proposed Development and that the national need for and benefits the Proposed Development would deliver, in that location, clearly outweigh the harm to biodiversity. The ExA's conclusion states that if the benefits of the Proposed Development are found to clearly outweigh the harm, then the loss or deterioration of the ancient and veteran tree, and harm to habitats and species of principal importance would be a matter of a little weight against the making of the Order [ER 3.7.103. and 3.7.104]. The Secretary of State agrees.

Habitats Regulations Assessment

178. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 ('the Habitats Regulations'), the Secretary of State as the competent authority is required to consider whether the Proposed Development (which is a project for the purposes of the Habitats Regulations) would be likely, either alone or in combination with other plans and projects, to have a significant effect on a European site.

179. Where likely significant effects cannot be ruled out, the Secretary of State must undertake an appropriate assessment ("AA") under regulation 63(1) of the Habitats Regulations to assess potential adverse effects on site integrity. Such an assessment must be made before any decision is made on undertaking a plan or project or any decision giving consent, permission or other authorisation to that plan or project. In

light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the plan or project will not, either on its own or in combination with other plans and projects, adversely affect the integrity of such a site, unless there are no feasible alternatives and imperative reasons of overriding public interest ("IROPI") apply (regulation 64). Where a plan or project is agreed to in accordance with regulation 64, notwithstanding a negative assessment of the implications for a European site, regulation 68 also requires that the appropriate authority must secure that any necessary compensatory measures are taken to ensure the overall coherence of the national site network is protected.

180. The Secretary of State has considered the application in line with her duty under the Habitats Regulations. The Secretary of State agrees with the ExA that the proposed development is not directly connected to or necessary for the conservation management of a European Site [ER 5.2.110].

181. The Secretary of State has given consideration to the Applicant's 'Habitats Regulations Assessment No Significant Effects Report' ("HRA") [APP-171] and she has considered the potential impact of the Proposed Development on five European protected sites that are within 30 km of the Proposed Development; Chiltern Beechwoods Special Area of Conservation ("SAC"), Wormley Hoddesdon Park Woods SAC, Lee Valley Special Protection Area, Lee Valley Ramsar Site and Aston Rowant SAC [ER 4.1.3 and Table 14.15].

182. The Secretary of State has had regard to the conclusions of the Applicant that there was no potential for likely significant effects alone or in combination with other plans or projects given that there were no relevant pathways for effects on the qualifying features on any of the European sites [ER 4.1.29]. The Secretary of State has noted that Natural England, as the Statutory Nature conservation Body, was consulted by the Applicant during the scoping stage of the HRA and Natural England confirmed it agreed with the approach to, and associated results and conclusions contained within the HRA No Significant Effects Report. No comments were made by any other IPs in relation to the HRA during the Examination [ER 4.1.30]. The Secretary of State has taken note of the conclusion of the ExA that likely significant effects from the Proposed Development on the identified European sites, alone or in combination with other plans and projects, may be excluded beyond reasonable scientific doubt and agrees with this conclusion [ER 4.1.31]. The Secretary of State has accepted the ExA's consideration that there is sufficient information to enable her to fulfil her duty as the competent authority under the Habitats Regulations and agrees that the need for an Appropriate Assessment is not required for this application. [ER 5.2.111].

Chilterns National Landscape

183. The Chilterns National Landscape (formerly the Chilterns Area of Outstanding Natural Beauty ("AONB")) is situated approximately 5km to the west of London Luton Airport and 3km to the north at its closest points [ER 3.8.1]. The Proposed Development does not involve any development within the Chilterns National Landscape. The Applicant's assessment on the impact of the Proposed Development on the Chilterns National Landscape is set out in ES Chapter 14, appendix 14.4 and the Chilterns AONB Special Qualities Assessment ("SQA") [ER 3.8.12]. While the SQA concluded that the Proposed Development would not have any significant effects on the Special Qualities of this landscape, the ES concluded that there would be a moderate adverse significant effect on the aesthetic or perceptual characteristics of

the landscape within the Chilterns AONB during construction assessment Phase 2b (2037–2041) and during the operational period [ER 3.8.13 first bullet]. Further, the assessment concluded that there would be no significant effects on the Special Qualities of the AONB from the limited increase in aircraft movements over areas already overflown [ER 3.8.13, second bullet and ER 3.8.22].

184. The Secretary of State has had regard to the submissions summarised at ER 3.8.24-ER 3.8.33, and notes that based on the comments raised in the submissions, the main Examination issues related to the matters:

- suitability of the SQA including methodology and findings;
- proposed extension to Chilterns National Landscape and AONB Sensitivity Test;
- compliance with National and Local Policy; and
- compliance with section 85 of the Countryside and Rights of Way (CRoW) Act 2000.

Suitability of the Special Qualities Assessment

Methodology

185. The Secretary of State notes that the Applicant and Natural England agreed that there was no formal guidance for assessing the impacts of development on the Special Qualities of the AONB. The ExA reports that Natural England considered that the Landscape and Visual Impact Assessment methodology provided a helpful basis for assessing those effects [ER 3.8.34]. However, the Secretary of State notes that Natural England also stated in its deadline 4 response that this methodology “...*will be most applicable to those Special Qualities which are expressed in terms of clear landscape features and characteristics which can be geographically delineated (perhaps concentrated within one or two Landscape Character Areas). It will struggle to work with characteristics and attributes (e.g., related to tranquillity and cultural/historic associations) which the LVIA approach is not designed to address directly.*”. Like Natural England, the Secretary of State also recognises the challenges any methodology would face in assessing the susceptibility of ‘relative tranquillity’ to increased air traffic over the AONB, due to the complexity of establishing a baseline for ‘relative tranquillity’ [ER 3.8.34]. The ExA considered that although there is no accepted methodology for measuring effects on tranquillity within areas of the Chilterns National Landscape, this does not mean that it is not possible to undertake a full qualitative analysis of relative tranquillity within areas of the Chilterns National Landscape [ER 3.8.48]. The Secretary of State has considered the comments from various parties on the Applicant’s SQA’ [ER 3.8.40 – ER 3.8.47] and notes the outstanding disagreement between the Applicant and Natural England at the close of the Examination on the effects on tranquillity. Natural England considered that the permanent deterioration of the Special Quality of Tranquillity within the AONB would be a significant adverse effect on the statutory purpose of the AONB while the Applicant maintained that there was no agreed methodology for assessing tranquillity [ER 3.8.47]. The ExA expressed sympathy with the Hertfordshire Host Authorities’ argument that a more detailed narrative on relative tranquillity and areas experiencing dark skies could have been provided to aid understanding of the baseline conditions [ER 3.8.49]. Further, the ExA considered that the Applicant could also have provided a more detailed narrative of the baseline conditions within the central and northern

part of the Chilterns National Landscape to the north of Luton; the area to the north-east of Tring and to the north of Berkhamsted; the area to the east of Wendover; and the area between Wendover and Princes Risborough areas and other areas of the AONB that experienced tranquillity could have been included in the assessment [ER 3.8.50]. The ExA concluded that the SQA should have included more detailed narrative on the Special Qualities highlighted by the Chilterns Conservation Board (“CCB”) [ER 3.8.36] and Hertfordshire Host Authority [ER 3.8.37] and why those areas would not be affected [ER 3.8.54]. The Secretary of State has considered this further below.

186. The Applicant deemed it beyond the scope of their assessment to ‘*describe and evaluate in detail where contributors to and detractors from relative tranquillity are present or absent within the Study Area*’. The ExA considered that as the application was an NSIP and as Chapter 14 of the Environmental Statement concluded that significant adverse effects on the aesthetic and perceptual qualities would occur to a Nationally Designated Landscape, it was unclear why the Applicant considered this to be beyond the scope of its assessment. The ExA concluded that the Applicant had not provided robust justification for not providing additional detail regarding the location of contributors to and detractors from relative tranquillity [ER 3.8.51]. The Secretary of State disagrees and has considered this further below.

187. The Secretary of State notes the endorsement by Natural England of CCB’s comments regarding the need for a more considered approach to tranquillity and its suggestion that the Applicant’s assessment should include more of the area’s Special Qualities [ER 3.8.35]. The Secretary of State has taken into account the Applicant’s view that there would be a low increase in the number of overflights or that baseline overflights were already high but also notes that the ExA considered that it is unclear how the experience of the people enjoying the Special Qualities in those areas would be affected [ER 3.8.52]. Although the Applicant concluded that the increase in overflights over most of the Chalk Escarpment would be relatively low, the ExA found that this area would experience more than double its baseline of overflights by Phase 2b [ER 3.8.53]. As such, the ExA considered that the SQA should have included a more detailed narrative on the Special Qualities, as highlighted by CCB, as to why those areas would not be affected [ER 3.8.54].

188. While the Secretary of State notes the comments made by the Hertfordshire Host Authorities regarding the need for a more transparent assessment of the AONB’s capacity to absorb more overflights, she also notes the ExA’s reservations about the reliability of conclusions from such an exercise and agrees with the ExA that a professional judgment has to be made regarding the magnitude of impact of increases in overflights compared with the baseline conditions in affected areas. The ExA found that irrespective of any differences of professional opinion, the SQA sought to do this [ER 3.8.55].

Assessment Findings

189. The ExA considered that increases in overflights in all areas of the Chilterns National Landscape would not be small and that the effects could be experienced over a greater area than identified by the Applicant [ER 3.8.56]. The Secretary of State notes the observations made by the ExA regarding the impacts on Ivinghoe Beacon as outlined at ER 3.8.57 by way of example. The ExA was of the view that the recreational assets (such as the Ivinghoe Beacon, the footpaths to the Beacon and the panoramic views located under the flightpath) contribute to the enjoyment of the

Special Qualities of panoramic views and relative tranquillity. The ExA considered that the wider appreciation of Ivinghoe Beacon would be impacted by an increase from 20 daily overflights in the baseline to 50 overflights in Phase 2b, which is more than double, and the ExA agreed with the Hertfordshire Host Authorities that these increases could result in greater than a 'very low' magnitude of impact and that the assessments of predicted overflights underrepresent the extent of increases that would be experienced [ER 3.8.58].

Relative Tranquillity

190. Although the Secretary of State notes that the Hertfordshire Host Authorities questioned the Applicant's assignment of susceptibility in relation to tranquillity as 'medium', the ExA, recognised that if susceptibility was judged to be higher than 'medium', given that the landscape value has been judged to be 'very high', the overall sensitivity of the receptor (which is a combination of susceptibility and value) would not change. Accordingly, the ExA concluded that the dispute in relation to the assignment of susceptibility in relation to tranquillity as 'medium' would not materially alter the Applicant's conclusions [ER 3.8.60].

191. The Secretary of State notes the consideration given by the ExA to the comments raised by the statutory parties together with paragraphs 6.4.13 to 6.4.26 of the Applicant's response [REP7-046]. Based on the increases of overflights presented in Figures 6.3 to 6.7 of that response, the ExA did not agree with the Applicant that the magnitude of impact would be very low adverse. Further, the ExA did not agree with the Applicant that, because existing areas are already overflown, any increase in overflights would constitute a low magnitude impact. Accordingly, the ExA concluded that given the proportional increases in some areas, which could be more than double, the effect of overflights on relative tranquillity was underrepresented [ER 3.8.61].

192. The ExA agreed with the Hertfordshire Host Authorities that the matter of dark skies was not particularly well presented in the Special Quality Assessment and considered that the implications of lighting and the need for an assessment in accordance with the Guidelines for the Landscape and Visual Impact Assessment should have been considered. However, the ExA observed when conducting night-time site inspections, the effects of aircraft landing lights on night skies from a number of viewpoints within the Chilterns National Landscape [ER 3.8.62] and found the transient lighting from aircraft was fleeting and not so prominent as to be distracting or detrimental. The ExA concluded that although the SQA would have benefited from a more detailed assessment, the effects from aircraft lighting would be unlikely to be significant [ER 3.8.63].

193. Overall, with regard to relative tranquillity, the ExA concluded that the increase in overflights arising from the Proposed Development would undermine the Special Quality of relative tranquillity rather than conserve or enhance it [ER 3.8.64].

Panoramic Viewpoints

194. The Secretary of State notes the representations from the Hertfordshire Host Authorities that large-scale built development, including solar panels, would result in the deterioration of the Special Qualities of the AONB. The ExA was not clear which areas of the AONB and the Special Qualities within those parts would be affected and concluded that the airport was at such a distance that the built form of the Proposed Development would be unlikely to adversely affect panoramic views within the Chilterns National Landscape [ER 3.8.65]. The ExA concluded that the enjoyment and

experience of panoramic viewpoints would be compromised by the increased overflights, and this would have a greater than a 'very low' adverse magnitude of impact as assessed by the Applicant (and considered in the Relative Tranquillity section above). As such, the ExA considered that the enjoyment of this Special Qualities would be diminished by the Proposed Development [ER 3.8.66].

Proposed Extension to the Chilterns National Landscape and AONB Sensitivity Test

195. The Secretary of State is aware that Natural England is leading a boundary review of the Chilterns National Landscape to extend its boundary. At the close of Examination, no update had been provided on whether Natural England had identified any of the proposed Candidate Areas to be progressed [ER 3.8.67]. The ExA considered that a boundary extension would change the sensitivity for visual receptors and have implications for the conclusions of the assessment in the sensitivity test. However, the ExA considered that, given the uncertainties in the boundary extension process, the extension to the boundary would attract little weight and the ExA did not regard it as proportionate to request the Applicant to revisit the findings in the sensitivity test [ER 3.8.76]. As the ExA had reservations on the assessment findings on sensitivity relating to visual receptors, the ExA recommended that if there is any change to the boundary of the National Landscape, an updated assessment on landscape and visual effects within the area would be required [ER 3.8.77]. In her consultation letter dated 2 August 2024, the Secretary of State sought an update from Natural England on the status of the Chilterns Boundary Review Project. In its response dated 14 August 2024, Natural England confirmed that work on the Chilterns Boundary Review Project was on-going and information regarding the proposed Candidate Area locations was not yet in the public domain. Natural England confirmed that they were working towards producing fixed boundary Candidate Area maps and sharing them publicly as part of a Public and Statutory Consultation that is currently scheduled to take place in Spring 2025. It is noted that Natural England is considering areas immediately to the east of the Order limits and that it is possible that there may be some slight overlap in particular locations between the red line Order limits and Candidate Areas. However, as no changes to the boundary of the National Landscape have been confirmed, and any proposals would be subject to public consultation, the Secretary of State is satisfied that the Landscape and Visual Impact Assessment remains sufficient for the purposes of decision making [ER 3.8.77].

Compliance with National and Local Policy

196. The Secretary of State notes the consideration given by the ExA to the comments from the Applicant, Relevant Planning Authorities, the Chilterns Conservation Board and Natural England regarding the compliance of the Proposed Development with both national and development plan AONB policies as summarised at ER 3.8.79-83.

197. The ExA concluded that the Special Qualities of panoramic viewpoints and relative tranquillity would be harmed by the Proposed Development, such that the Special Qualities of the Chilterns National Landscape would not be conserved and its finding that the Proposed Development would be contrary to Central Bedfordshire Local Plan Policy EE7 part 1 (to conserve and enhance the AONB Special Qualities, character and tranquillity) and part 3 (to meet the statutory aims of the Chilterns AONB management plan); and Dacorum Borough Council Core Strategy Policy CS24 which seeks to protect the AONB Special Qualities, the scarp slope skyline and to have regard to the AONB management plan [ER 3.8.84].

198. As the areas of the AONB around Ivinghoe falling within the Vale of Aylesbury would be compromised, the ExA considered that the Proposed Development would also be contrary to the Vale of Aylesbury Local Plan Policy NE3 which it noted had similar policy ambitions to the Central Bedfordshire Local Plan and the Dacorum Borough Council Core Strategy while also providing specific advice on actions to conserve and enhance the AONB [ER 3.8.85].

199. Due to the more limited increase in overflights in this area, the ExA considered that the effect on the Special Qualities of the AONB in North Hertfordshire would be less and would not necessarily compromise meeting the North Hertfordshire Local Plan Policy NE3 [ER 3.8.86].

200. The ExA concluded that the Proposed Development could compromise the purposes of the designation of the AONB and this would be contrary to the requirements of paragraph 5.222 of the ANPS. Although the ExA was satisfied that the built development would avoid or minimise adverse impacts on the designated areas, it considered that the scale of increase in overflights would not minimise adverse impacts and the Proposed Development would therefore be contrary to the NPPF (paragraph 182).

Compliance with Section 85 of the CROW Act

201. The Secretary of State notes that the Levelling Up and Regeneration Act 2023 included a provision at section 245(5) to amend section 85 of the CROW Act in relation to AONBs. The amendment to section 85 places a duty on relevant authorities “in exercising or performing any functions in relation to or so as to affect land in an area of outstanding natural beauty” (in England) that authority “must seek to further the purpose of conserving and enhancing the natural beauty” of the AONB (see s.85(A1) CROW Act). When questioned on the implications of the amendment to section 85 of the CROW Act, the Applicant, [REP6-066] while acknowledging that the amendment strengthened the obligations, considered that national policy and their application was consistent with the requirements of the ANPS and NPPF in respect of AONB [ER 3.8.90]. In particular, the Applicant’s case was that the duty did not prescribe a particular outcome and that it could be complied with where an NSIP results in adverse effects in an AONB. The Applicant’s position was that it was not possible to mitigate noise effects any further and nothing further can reasonably be done in terms of conserving and enhancing the Chilterns AONB.

202. Natural England, Central Bedfordshire Council and the Hertfordshire Host Authorities considered that the duty to ‘seek to further’ was a stronger, active duty, not a passive one and any relevant authority must take all reasonable steps to explore how the statutory purposes of the protected landscape could be furthered. Further, they considered that this duty goes beyond mitigation and must demonstrate with reasoned evidence, what measures could be taken to further the statutory purposes or demonstrate they are not affected [ER 3.8.91]. The Secretary of State notes that the Chilterns Conservation Board suggested that the impact on relative tranquillity (as considered above) would harm the Special Qualities of the AONB and not ‘further the purpose’; and the Hertfordshire Host Authorities also considered that the Proposed Development was inconsistent with section 85 of the CROW Act [ER 3.8.92].

203. The ExA considered the Application would have benefitted from additional measures to promote the Special Qualities of the Chilterns National Landscape and support the measures in the management plan and local policies related to the AONB

to provide comfort that the Proposed Development would seek to further the purpose of conserving and enhancing the natural beauty of the AONB [ER 3.8.97]. The ExA concluded that it was unable to recommend to the Secretary of State that this duty was complied with [ER 3.8.99].

204. In response to this, the Secretary of State explored this matter further during the decision-making period and invited the Applicant in her consultation letter of 2 August 2024, to set out what, if any, further enhancement measures it considered could be brought forward should it be considered necessary to ensure compliance with the amendment to section 85 of the CRow Act in relation to the Chilterns National Landscape. In its response of 19 August 2024, the Applicant stated that it did not consider that any further mitigation or compensation measures were capable of being brought forward to effectively reduce or offset the residual noise effects from aircraft overflights on amenity and tranquillity in parts of the Chilterns National Landscape and did not consider that such further mitigation was necessary in planning terms. The Applicant stated that in relation to noise, the principal mitigation measure for the Chilterns National Landscape was already provided for in the Noise Envelope within the GCG Framework and the noise controls in the Air Noise Management Plan. Further, the Applicant maintained its position that no further enhancement measures were necessary or appropriate as it considered that the Proposed Development already complied with the amendment to section 85 of the CRow Act and that a finding of compliance with policy in the ANPS would amount to compliance with the duty.

205. In their responses dated 6 September 2024, Natural England and the Chilterns Conservation Board stated that they did not agree that the Proposed Development complied with section 85 of the CRow Act. The Secretary of State explored this matter further by requesting, in her letter dated 27 September 2024, the Applicant to consider whether there were any other enhancement measures that could be brought forward with Natural England and the Chilterns Conservation Board to address their concerns, and if no agreement was possible, for the parties to set out their respective views on what was needed to resolve the concerns. In their response dated 1 November 2024, the Applicant confirmed it had engaged further with the Chilterns Conservation Board with the aim of establishing what further enhancement measures it thought could be brought forward to assure compliance with section 85 of the CRow Act, despite the Applicant maintaining its position that no further measures were necessary. The focus of this engagement was a legal agreement that would secure a financial contribution towards projects in the Chilterns National Landscape, directly related to conservation or enhancement. However, the parties remained conflicted over the agreement both in terms of the amount of financial contribution and whether this measure would comply with the enhanced duty. Similarly, the Chilterns Conservation Board confirmed the same in their response dated 1 November 2024. Due to the impasse, the parties set out their respective views on what was needed to resolve the concerns. The Chilterns Conservation Board's response made it clear that Natural England would defer to the Chilterns Conservation Board in this regard and would not be a detailed party to any agreement, but the Chilterns Conservation Board would continue to consult with them where appropriate. They set out their view that *“Demonstrating that the duty has been applied in an “active” way and taking “all reasonable steps to explore how the statutory purposes... can be furthered” cannot be achieved simply in terms of identifying some enhancement measures. Demonstrating compliance with the duty will in our view involve “reasoned evidence” of the consideration of:*

- avoiding harm (for example by considering alternatives to meeting the development need, either in the proposed location or in principle);
- reducing/mitigating harm (seeking to moderate impacts);
- where harm is clearly demonstrated to be unavoidable, in terms of consideration of the previous two points, compensating for harm (in terms of “like for like measures and replacement”); and then
- going “beyond” this to provide measures that “further the statutory purposes” of the protected landscape, helping to deliver the statutory Management Plan.”

206. Therefore, the Chilterns Conservation Board could not be assured section 85 of the CRow Act would be complied with on the basis of proposed enhancement measures alone, without sight of the full reasoned justification for any decision to grant the Order. Nonetheless, it was open to agreement on a financial contribution towards the Chilterns National Landscape.

207. In its response dated 8 November 2024 without prejudice to its primary position that policy compliance would amount to compliance with section 85 of the CRow Act the Applicant set out that, if the Secretary of State considered it necessary, she could include a new article 54 in the Order and proposed wording which would secure a one-off financial payment of £250,000 to the Chilterns Conservation Board to use towards projects that would further the purposes of conserving or enhancing the Chilterns National Landscape. The Chilterns Conservation Board (in its letter dated 21 November 2024) considered that the Applicant’s offer fundamentally demonstrated a disregard for the scale of harm to the natural beauty of the Chilterns National Landscape and that it would be insufficient on its own to demonstrate compliance with the section 85 duty. Natural England in its response dated 25 November 2024, indicated that their fundamental concern with the Applicant’s proposed approach was that in the absence of agreement with the Chilterns Conservation Board it is unclear what such funds might be used for or whether they are capable of delivering any meaningful contribution towards furthering the purposes of the national landscape.

208. The Secretary of State thanks the Applicant and the Chilterns Conservation Board for their engagement on this matter, and notes their respective interpretations of the purpose of section 85 of the CRow Act and that ultimately, an agreement could not be reached. The Secretary of State notes the debate between the Applicant and Interested Parties as to the requirements of section 85 of the CRow Act and has considered this further below. The Secretary of State is aware that since the above responses were provided, on 16 December 2024, DEFRA published guidance for relevant authorities seeking to further the purposes of Protected Landscapes and has had regard to this when making her decision. The Secretary of State considers that in this case a financial contribution of £250,000 for projects which further the purposes of conserving or enhancing the Chilterns National Landscape is sufficient and necessary to meet section 85 of the CRow Act in this case (on either the Applicant or Chiltern Conservation Board and Natural England’s interpretation of its requirements).

209. Accordingly, the Secretary of State has included a new article 54 in the Order in the terms proposed by the Applicant in its response dated 8 November 2024. With the inclusion of this article, the Secretary of State is satisfied that the section 85 CRow Act has been met. The Secretary of State, having considered the effects of the Proposed Development, considers that a fund of £250,000 represents a reasonable

and proportionate contribution to further the purposes of enhancement and conservation in relation to the Chilterns National Landscape.

The Secretary of State's Conclusion on the Chilterns National Landscape

210. The Secretary of State notes that while the Proposed Development would not have a direct impact on the Chilterns National Landscape, it is currently overflowed and would continue to be overflowed by an increased number of aircraft as a result of the Proposed Development. The Secretary of State has considered the representations made by the Applicant and other Interested Parties during the Examination and has also taken account of the representations submitted in response to her consultations during the decision-making period.

211. Natural England confirmed that there is no formal guidance for assessing the impacts of a development on the Special Qualities of areas of outstanding natural beauty, such as the Chilterns National Landscape, in England. As set out above, Natural England also confirmed that the methodologies to assess tranquility in terms of landscape and visual impacts are not necessarily appropriate as they have not been designed to directly address qualities relating to tranquility and cultural/historic associations. It is therefore unsurprising that there is a disagreement between parties on the Applicant's SQA and its conclusions [ER 3.8.39 – 3.8.47]. The Secretary of State notes that the Applicant's SQA followed Scottish Natural Heritage's draft guidance for assessing the impacts of proposed development on special landscape qualities of national scenic areas in Scotland. The Secretary of State is aware that the Scottish national scenic areas are comparable to areas of outstanding natural beauty in England in terms of their importance and purpose of their designation. She notes that the Applicant also took into account guidance from the Guidelines for Landscape and Visual Impact Assessment where appropriate. The Secretary of State is satisfied with the approach taken by the Applicant in light of the absence of guidance for the assessment of such landscapes in England.

212. The Secretary of State disagrees with the ExA that the Applicant's SQA has not provided robust justification for not including additional detail regarding the location of contributors to and detractors from relative tranquility [ER 3.8.51]. She agrees with the Applicant that it is not reasonable to expect it to evaluate in detail where contributors to and detractors from relative tranquility are present or absent in the study area, or to determine the extent to which traffic from individual roads affects tranquility within the study area. The Secretary of State notes that the Applicant used tranquility mapping provided by the Council for the Protection of Rural England overlaid with the study area, and identified that relative tranquility in locations adjacent to urban areas such as Luton, Dunstable, Tring and Berkhamstead is lower than other areas. The Secretary of State considers this a sensible and proportionate approach. The ExA also reports that the CBB stated that the Applicant had not put forward any evidence to support its claim that traffic noise from busy road corridors substantially affects tranquility in the study area [ER 3.8.40], but notes that the ExA's Report does not include any references to alternative evidence that demonstrates that the Applicant's conclusions is incorrect.

213. Overall, the Applicant's SQA concluded that there would be no significant effects on the Special Qualities of the Chilterns National Landscape as a result of the Proposed Development from the increase in aircraft overflowed [ER 3.8.21 – 3.8.22]. Following careful consideration of the assessment, the Secretary of State is satisfied

that the Applicant has, as far as reasonably possible, assessed the potential effects from the Proposed Development on the Chilterns National Landscape. She accepts the Applicant's conclusion that no significant effects would occur on the Special Qualities of the Chilterns National Landscape as a result of the Proposed Development.

214. The Secretary of State notes that while the Applicant's assessment states no significant adverse impacts would occur to the Chilterns National Landscape as a result of the Proposed Development, there would be a small expansion of existing aircraft movement contours as a result of the increase in aircraft flights, but that this would not result in an introduction of new aircraft movement contours. The Secretary of State notes that the Civil Aviation Authority in its SoCG with the Applicant states that while it is still too early in the Airspace Modernisation Programme to say what impact this will have on airspace, it was satisfied there is no impediment to the Proposed Development on the grounds of airspace.

215. On new or different areas to be overflowed, any change to current movement contours can only take place through the submission and approval of an airspace change proposal by the Civil Aviation Authority. The Secretary of State has considered the requirements of this process and is aware that the Civil Aviation Authority is required to consider the CRow Act in assessing and approving such proposals and that that proposals are subject to a public consultation. Paragraph 4.54 of the ANPS states that in taking her decision, the Secretary of State's focus should be on whether the Proposed Development is an acceptable use of the land, and that while she should assess potential impacts of processes, emissions or discharges, this would be to inform decision-making. In line with the ANPS, the Secretary of State has therefore taken her decision with the assumption that any future airspace change will be properly applied and enforced by the Civil Aviation Authority's through its airspace change process and that the CRow Act duty will need to be complied with at that stage.

216. The Secretary of State has also considered the mitigation embedded in the Order such as the GCG Framework. The Secretary of State also notes that the Air Noise Management Plan is also secured by the Order, and that both this document and the GCG Framework have been compiled in line with Government's Air Navigation Guidance. The Secretary of State notes that the GCG Framework will be independently monitored and that specific requirements relating to the Green Controlled framework are secured in Schedule 2 Part 3 of the Order. She also notes that the Air Noise Management Plan is secured via a requirement included in Schedule 2 of the Order.

217. The Secretary of State notes that section 10.2 of the Applicant's Consultation Report and its responses to her consultations state that the Order includes inbuilt mitigation measures in that the proposed passenger numbers had been reduced from 38 mppa to 32 mppa in response to concerns relating to the need to reduce noise and other impacts raised in response to the Applicant's 2018 public consultation. The Applicant also states that the noise envelope in the GCG Framework contains a mechanism for the limit to be reduced in future years where quieter than existing aircrafts or an airspace change that would enable lower noise levels to be achieved, and that this would further enhance the Chilterns National Landscape. She accepts the Applicants position that while it has sought to mitigate noise as far as practicable through the Order, it is not possible to mitigate or compensate any further. However, noting that the increase in flights while not resulting in a significant impact would result

in a small expansion of the aircraft movement contours, the Secretary of State has considered this in the context of the CRoW Act.

218. Overall, having reached the conclusion that no significant effects would occur on the Special Qualities of the Chilterns National Landscape as a result of the Proposed Development (for the reasons stated above) and with the inclusion of the new Article 54 to satisfy section 85 of the CRoW Act, the Secretary of State considers that the Chilterns National Landscape would attract limited weight against the making of the Order.

219. Given that landscapes such as the Chilterns National Landscape have the highest status of protection in relation to landscape and scenic beauty, the Secretary of State has given great weight to the need to conserve this landscape and its special qualities. Noting that there will be some negative but not significant impacts, she has considered whether there are exceptional circumstances for granting consent. The Secretary of State is satisfied that the need for the Proposed Development and the expected benefits carry great positive weight. She is also satisfied that the Applicant has adequately assessed alternative options to increase the capacity of the airport and that the Proposed Development represents the best option. The Secretary of State also accepts that it is not possible for the Applicant to further mitigate the residual harm beyond the existing measures included in the Order, or inbuilt into the Application. She is therefore satisfied that the exceptional circumstances test has been met.

Greenhouse Gases and Climate Change

220. The Secretary of State has had regard to the Applicant's assessment of greenhouse gas ("GHG") emissions as set out in Chapter 12 of the Environmental Statement and supporting figures and appendices as detailed at [ER 3.12.13 – 3.12.36]. The Secretary of State has also had regard to the subsequent information provided by the Applicant dated 6 September 2024 on the potential implications of the recent judgement by the *Supreme Court in R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others [2024] UKSC 20* ("*Finch*") in relation to the Proposed Development and the further representations from Interested Parties on this matter.

221. The UK's international obligations under the Paris Agreement were ratified by the UK Government in 2016. These obligations are translated in the UK by way of the carbon budgets set under the Climate Change Act 2008. In June 2019, the Government announced a new carbon reduction 'Net Zero' target for 2040 which was given effect by the Climate Change Act 2008 (2050 Target Amendment) Order 2019. This is a legally binding target for the Government to cut carbon emissions to net zero, against the 1990 baseline by 2050.

222. The Climate Change Act 2008 requires five-yearly carbon budgets to be set 12 years in advance so as to meet the 2050 target. Six carbon budgets have been adopted. The time periods covering the third ("3CB"), fourth ("4CB"), fifth ("5CB") and sixth ("6CB") carbon budgets are 2018-2022, 2023-2027, 2028-2032 and 2033-2037 respectively. Achieving net zero will require future GHG emissions to be aligned with these and any future new or revised carbon budgets that may be set out by Government to achieve the 2050 target. Compliance with the Climate Change Act 2008 (as amended) would provide a route towards compliance with the Paris Agreement. Emissions from international aviation are accounted for in CB6 only.

Emissions from construction, domestic aviation, airport operations and surface access are however accounted for against all carbon budgets.

223. The Secretary of State notes the overview of the policy and legal considerations relating to this matter at [ER 3.12.4 -3.12.12]. Paragraph 5.76 of the ANPS states that the Applicant must provide evidence of the carbon impact of the project so that it can be assessed against the Government's carbon obligations, including, but not limited to, the carbon budgets. Paragraph 5.82 states that "any increase in carbon emissions alone is not a reason to refuse development consent, unless the increase in carbon emissions resulting from the project is so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets" [ER 3.12.7]. Paragraph 5.83 requires evidence of appropriate mitigation measures to demonstrate that the carbon footprint is not "unnecessarily high". The ANPS also requires that emissions are split into traded sector and non-traded sector emissions, and for a distinction to be made between international and domestic aviation emissions (paragraph 5.76). The ANPS lists the emissions which should be quantified (paragraph 5.77) and the mitigation measures that are likely to be incorporated (paragraphs 5.78 and 5.80) [ER 3.12.8].

224. Paragraph 108 of the NPPF states that the environment impacts of traffic and transport infrastructure must be identified, assessed, and taken into account including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains to be considered [ER 3.12.9].

225. The 'Decarbonising Transport – A Better, Greener Britain' ("the Decarbonising Transport Plan") was published on 14 July 2021 and sets out Government's commitments and the actions needed to decarbonise the entire transport system in the UK. It sets out the pathway to net zero transport in the UK, the wider benefits net zero transport can deliver and the principles that underpin Government's approach to delivering net zero transport. It states that the combining of projections for domestic and international aviation emissions through the inclusion of international aviation in the UK's sixth carbon budget in 2033 means that aviation emissions will continue to fall to 2050. Government's Jet Zero Strategy published on 19 July 2022 sets out Government's ambitions to decarbonise airport operations by 2040 and aviation by 2050. This includes a high ambition scenario that sees aviation emissions peak in 2019 and then follow a reduced trajectory to achieve net zero by 2050 [ER 3.12.6].

The Applicant's assessment of carbon emissions

226. The Applicant assessment of carbon emissions divided emissions streams into construction, aviation, airport operations and surface access journeys [ER 3.12.13] with all emissions reported as tons of carbon dioxide equivalent ("tCO₂e").

227. The Secretary of State notes that the Applicant set out in Table 12.26 of their ES [REP3-007] that in relation to aviation emissions the Proposed Development would result in an impact of 2.69% on CB4 (if one were to use the Committee on Climate Change's ("CCC's") planning assumption that 2050 aviation emissions will be around 2005 levels i.e. 37.5MtCO₂), 2.45% in relation to their planning assumption for CB5 (noting CB4 and CB5 do not include international aviation emissions and so the figures shown are expressed as percentages of the CCC's planning assumption for aviation emissions only, not the whole carbon budget) and 0.41% of CB6, which represents the UK economy as a whole and where international aviation emissions are also accounted for.

228. For airport operations which need to be accounted for in all carbon budgets, the Secretary of State notes that the Applicant considers the impact on CB4, CB5 and CB6 is expected to be 0.003% respectively [REP3-007, Table 12.27 of the Environmental Statement].

229. For surface access emissions which need to be accounted for in all carbon budgets, the impact on CB4 is expected to be 0.052% on CB5, 0.054% and on CB6 0.076% [REP3-007, Table 12.28 of the Environmental Statement].

230. For construction emissions which need to be accounted for in all carbon budgets, the Secretary of State notes that the Applicant considers the impact on CB4 is expected to be 0.011%, on CB5 0% as no construction is expected to take place during this time and on CB6 0.053% [REP3-007, Table 12.29 of the Environmental Statement].

231. The Applicant concluded that for each type of emissions stream (construction, aviation, airport operations and surface access journeys) [ER 3.12.13] alone, these emissions would account for a very small proportion of national emissions and the effect from these emissions would be minor adverse and not significant [ER3.12.16, ER 3.12.23, ER 3.12.27 and ER 3.12.32]. Additionally, they concluded that the combined effects from the Proposed Development are not so significant that they would have a material impact on government's ability to meet its carbon budgets or reduction targets [ER 3.12.36, REP3-007, section 12.11].

Reliance on Delivery of the Jet Zero Strategy High Ambition Scenario

232. The Secretary of State notes that, at the close of Examination, Buckinghamshire Council disagreed with the confidence given by the Applicant in their assessment to the delivery of technological 'aspirations' relied upon in the Jet Zero Strategy in particular in relation to sustainable aviation fuels, and the request for the Applicant to undertake a sensitivity analysis to explore the effects of slower delivery of sustainable aviation fuels and low carbon aircraft in the future. Other parties also raised concerns about reliance on the Jet Zero Strategy and sustainable aviation fuels [ER 3.12.37]. This is also a matter raised by parties post examination. The Applicant considered it was appropriate to rely on the Jet Zero Strategy high ambition scenario, including technological changes as it represented current Government policy on aviation [ER 3.12.38] and whilst acknowledging that they had no control over these national measures, considered that the request for a full sensitivity test would not be possible due to the existing available modelling data [ER 3.12.39 – 3.12.40].

233. The Secretary of State notes that a number of parties drew attention to the CCC's 2023 Progress Report and concerns raised around the delivery of this and their view that there should be "no net airport expansion" until the carbon intensity of aviation outperforms the Government's remissions reductions pathway [ER 3.12.43]. The Applicant stated that the Progress Report should not affect the weight given to the Jet Zero Strategy because the Government is not required to follow the advice of the Committee [ER 3.12.44]. The Secretary of State agrees with the ExA that the CCC's advice does not alter the existing policies or strategies and that there are other policy mechanisms available outside of the 2008 Act and ANPS which can address any difficulties in meeting the UK's legally binding climate obligations [ER 3.12.50], including the Government's commitment to review the *Jet Zero Strategy* every five years. The Secretary of State further notes the most recent Government's Response to the CCC's annual progress report to Parliament (dated October 2023) which states

that Government's analysis is that the *Jet Zero Strategy* continues to demonstrate that the sector can achieve net zero carbon emissions by 2050 without the Government intervening directly to limit aviation growth and that this conclusion was arrived at taking into account latest known expansion plans at UK airports. The ExA noted that the High Court judgement '*R (Friends of the Earth Ltd) v Secretary of State for Business Energy and Industrial Strategy [2024] EWHC 995 (admin) (Friends of the Earth No2)*' concluded that Government had breached the Climate Change Act 2008 duty because there was insufficient information provided to the Secretary of State for Energy Security and Net Zero to reach a view as to whether she had in place policies and proposals which would enable carbon reduction targets to be met. The Secretary of State does not consider that *Friends of the Earth No2* changes the current policies (including the Decarbonising Transport Plan and Jet Zero Strategy) and like the ExA has no reason to believe that Government will not address the need to comply with their legal duties in relation to climate change [ER 3.12.51]. The Secretary of State notes that the Court Order following *Friends of the Earth No2* requires the Secretary of State for Energy Security and Net Zero to produce a new Carbon Budget Delivery Plan by October 2025. The Secretary of State therefore agrees with the ExA that the CCC's advice has neutral weight [ER 3.12.52].

234. The Secretary of State notes that carbon budget 7 (2038-2042) must be set by June 2026 with the CCC presenting their advice on the level of ambition, and the pathways to deliver it to Government on 26 February 2025. The advice provided by the CCC in February will not affect the proposed approach to be taken by the Secretary of State in relation to this application.

Conclusion on reliance on delivery of the Jet Zero Strategy

235. The ExA concluded that the UK Greenhouse Gas emissions, including those from the aviation sector, are controlled by the carbon budgets and the requirement to meet net zero by 2050 in the Climate Change Act 2008, and that the Government has the ability to introduce control mechanisms, such as the UK Emissions Trading Scheme ("UK ETS") as needed, to help deliver the legislative requirements. Paragraph 4.54 of the ANPS is clear that decisions under the 2008 Act should complement but not duplicate decisions taken under the relevant pollution control regime, and the ExA considered that the Climate Change Act 2008 is such a regime and must work on the assumption that it will be properly applied and enforced [ER 3.12.48]. The Secretary of State agrees.

236. The Secretary of State is satisfied that the Jet Zero Strategy includes multiple pathways and solutions that are likely to be available to achieve the Government's trajectory for a reduction in aviation emissions and that there is a commitment to monitoring progress against the trajectory annually from 2025 in addition to reviewing the overall trajectory every five years. Given this, the Secretary of State agrees with the ExA that it is reasonable for the Applicant to have based its assessment on the current preferred High Ambition scenario in the Jet Zero Strategy and underlying assumptions and that the outcomes must necessarily be the same or similar to meet the legislative targets. The Secretary of State notes that it was for this reason the ExA considered that it was not necessary for the Applicant to assess a scenario assuming that little progress against the Jet Zero Strategy is made or to review alternative pathways as requested by some parties [ER 3.12.49]. The Secretary of State agrees. While she is aware that the lawfulness of the Jet Zero Strategy is being challenged, she is content that the strategy is and will remain Government policy and in any case

agrees with the ExA that Government will ensure that its legislative duties are complied with, including working to ensure that appropriate policies are in place to manage the emissions from the aviation industry [ER 3.12.51].

Application and Coverage of the UK ETS and the Carbon Offsetting and Reduction Scheme for International Aviation

237. There is a distinction between traded and non-traded emissions i.e. those that are covered and those that are not by the UK ETS. This sets a cap on the amount of carbon that can be emitted including from airlines, within the European Economic Area (“EEA”) and Gibraltar; and the allowances under the UK ETS will be aligned within the UK carbon budgets to achieve net zero by 2050 [ER 3.12.5]. This replaced the UK’s participation in the EU ETS in 2021 [REP3-007, paragraph 12.2.12]. Within the UK ETS there are free carbon emissions allowances to eligible parties or they can buy emission allowances which they can trade with other participants as needed to cover the emissions associated with their business operations [REP3-007, paragraph 12.2.12]. Whilst the UK ETS relates to emissions from aviation within the EEA and Gibraltar, the Carbon Offsetting and Reduction Scheme for International Aviation (“CORSIA”) is a scheme run by the International Civil Aviation Organisation (“ICAO”) which is a global market-based measure that requires airline operators to buy carbon credits to offset any emissions above a specified baseline [REP3-007, paragraph 12.11.12]. The UK is a voluntary participant in the CORSIA scheme which is currently in its first phase (2024-2026). The second phase is due to commence in 2027. Airline operators are required to monitor and report on aviation emissions, which is regulated by CORSIA for international flights and by UK ETS for domestic and EEA flights [REP3-007, paragraph 12.14.6].

238. The Secretary of State notes that Buckinghamshire Council requested sensitivity analysis of the UK ETS and CORSIA price development in the models for need and emissions and, at the close of Examination, this remained an area of disagreement [ER 3.12.53]. The Applicant, whilst noting the inevitable uncertainty around the future costs of compliance and market-based mechanisms, concluded that a sensitivity analysis involving so many variables would be of limited value [ER 3.12.54]. The Secretary of State notes that other parties highlighted that CORSIA would end in 2035 with no international agreement on what would replace it. In response, the Applicant stated that the expectation in the Jet Zero Strategy is that the aviation industry would achieve net-zero emissions by 2050 and drew attention to Government commitments on strengthening and reviewing the interaction between the UK ETS and CORSIA [ER 3.12.55 – 3.12.56]. The Applicant also stated that the Government had assumed carbon prices for both the UK ETS and CORSIA in the High Ambition scenario, suggesting that CORSIA would likely be extended or replaced, as detailed in Jet Zero: One Year On (2023) [ER 3.12.57].

239. The Secretary of State notes that the UK ETS does not apply to all aircraft emissions and further notes the National Economics Foundation’s contention that nearly half of the additional carbon emissions created between 2025 and 2050 would be from international aviation emissions and fall within the non-traded sector and have to be dealt with through CORSIA [ER 3.12.58]. In response, the Applicant stated that over 75% of emissions in the Core Planning case would be covered by the UK ETS which applies to EEA destinations and a large majority of the remainder would fall under CORSIA, whilst acknowledging that some destinations in central and eastern Europe were not caught by either. The Applicant acknowledged that clarifications

would need to be made to the CORSIA scheme, but as growth from the Proposed Development to destinations outside the EEA was not anticipated until the late 2030s there would be sufficient time for the Government to develop this [ER 3.12.59].

240. The ExA accepted that there is uncertainty around future carbon pricing and implementation of the CORSIA scheme, and that there would be an unconstrained, but likely very small, number of flights predicted to fly to non-EEA countries that would not be captured by either scheme. However, the overall emissions from aviation must be controlled at a national level and, at a minimum, must deliver the legislative requirements in the Climate Change Act 2008 [ER 3.12.61]. The Secretary of State agrees with this and the ExA's conclusions that the matter of carbon pricing is neutral and neither weighs for nor against the making of the Order [ER 3.12.62].

Calculation of Aviation Emissions

241. The Secretary of State notes that, at the close of Examination, a number of parties had not agreed to the calculation of emissions from aviation because only departing flights had been included and they did not consider this to be consistent with the IEMA guidance [ER 3.12.63]. The Applicant stated that this was a widely established practice internationally to avoid double-counting emissions which is adopted by DfT policy on aviation and climate change and is the accepted advice of the CCC [ER 3.12.64]. Like the ExA, the Secretary of State sees no reason to come to a different conclusion in this case [ER 3.12.65].

242. In her consultation letter of 29 August 2024, the Secretary of State requested further information on the potential implications of the judgement by the Supreme Court in *Finch* in relation to the Proposed Development including any implications for the GCG Framework. In its letter of 6 September 2024, the Applicant considered at paragraph 1.2.1 Appendix A, the potential implications of the *Finch* judgment. The Applicant's position is that the decision of the Supreme Court in *Finch* does not require assessment of indirect GHG emissions in circumstances where either (a) there is insufficient information on which to make a reasonable assessment or (b) where it is possible to make a judgment, the effects are not significant (see 1.1 of Appendix A to the 6 September 2024 letter). The Applicant then made further submissions in the context of the following points:

- a. The inclusion of GHG emissions from inbound flights as a result of the Proposed Development.
- b. The inclusion of GHG emissions from 'well-to-tank' ("WTT") activities as a result of the Proposed Development.
- c. The impact of indirect surface access emissions.
- d. The impact of GHG emissions from increased employment because of economic growth deriving indirectly from growth at the Airport.
- e. The impact on the Applicant's GCG Framework, including on the Limits and Thresholds proposed within GCG.

243. On point a., the Applicant restated their position on why it was only necessary to count emissions from outbound flights and that contextualising emissions from inbound flights is challenging because there is no single carbon budget to compare them to. However, it acknowledged that it was possible to calculate emissions from inbound flights and the Applicant considered it a reasonable approach simply to double the emissions set out in its ES. Whilst the calculation of emissions for both outbound

and inbound flights was set out in Table 1 (see 2.1.11 of Appendix A to the 6 September 2024 letter) for operational years, no assessment was provided on the impact of the calculated emissions against the relevant carbon budgets.

244. On point b., the Applicant's position was that the decision in *Finch* did not require them to be assessed because it was not 'inevitable' that the WTT emissions were a net addition to either UK or global emissions. This was for the reason that assessing WTT emissions against carbon budgets was conservative as a high proportion of WTT emissions in the supply chain occur as a result of production, refining and transportation of fuels outside of the UK and it is not clear that these emissions are new and additional to UK or global emissions because if additional aircraft movements could not be used at Luton they may arise elsewhere and there is no evidence that there would be a net increase in production or refining activities. However, notwithstanding that position, the Applicant considered WTT emissions as those produced using the process of extracting, refining and transporting fuel before it reaches its use in relation to:

- Construction
- Airport Operations
- Surface access
- Aviation

245. The construction emissions including WTT emissions were set out in Table 3 with an increase on the impact on the CB4 from 0.011% to 0.013%, the impact on CB5 would remain the same and the impact on CB6 would increase from 0.053% to 0.064%, an increase of 0.011% (although the Secretary of State notes the Applicant had stated in table 3 that it is an increase of 0.009%).

246. On airport operations, the applicant stated that including WTT emissions increased the impact on lifetime emissions by 10.7% (Table 4) with an increase on CB4 from 0.003% to 0.004%, and an increase of 0.00028% on CB5 and CB6 but due to rounding, the impact remains 0.003% (Table 5).

247. For surface access emissions, the applicant stated that including WTT emissions increased the impact on lifetime emissions by 22.2% (Table 6) with an increase on CB4 from 0.052% to 0.064%, an increase on CB5 from 0.054% to 0.066% and an increase on CB6 from 0.076% to 0.092% (Table 7).

248. For aviation emissions, the Applicant stated that including WTT emissions increased the impact on lifetime emissions by 20.8% of the baseline both when outbound only flights are considered as the baseline (Table 8) or inbound and outbound flights are considered (Table 9). They concluded that the impact on the UK carbon budgets when including WTT emissions on outbound flights resulted in an impact on carbon budgets of 0.054% for CB4, 0.056% for CB5 and 0.086% for CB6 (Table 10). When WTT emissions were included to both inbound and outbound flights this was said to result in an impact on carbon budgets of 0.11% for CB4, 0.11% for CB5 and 0.17% for CB6 (Table 11).

249. For each area, the Applicant concluded that the inclusion of WTT emissions remained Minor Adverse and Not Significant and is considered to represent an over-estimate as only a proportion of these WTT emissions relate to the UK carbon budget and it is not 'inevitable' that they are a net addition to emissions either in the UK or

globally. Overall, the Applicant concluded that when considering total emissions from the Proposed Development uplifted to include WTT emissions, the impact of the Proposed Development is not considered so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets, including carbon budgets and that the overall impact of the Proposed Development remains Minor Adverse, Not Significant.

250. On point c., the Applicant considered direct emissions associated with travel to and from the airport by passengers, staff and freight are the primary impact of emissions on the Proposed Development but that there could be indirect surface access emissions from changes to vehicle routing, or as a result of providing new highway capacity but the Applicant considered such indirect surface access emissions to be negligible. Overall, the Applicant concluded that emissions from Surface Access remain Minor Adverse, and Not Significant and that this conclusion remained unaffected by the additional information provided on WTT surface access emissions.

251. On point d., the Applicant considered carbon emissions from increased employment deriving indirectly from growth at the airport. Indirect economic effects were reported in the ES but the Applicant concluded that it was not possible to distinguish the activities that this economic activity would relate to or the extent to which they would result in additional carbon emissions and as such these effects are not capable of assessment. The Applicant concluded that such an assessment was not required as there was no causal pathway and there is insufficient information on which to make a reasonable assessment of the relevant impacts and that not assessing the unknowable effects was consistent with the *Finch* judgment.

252. On point e., the Applicant concluded that there are no implications of the *Finch* judgment for the GCG Framework.

253. The Secretary of State invited responses to this in her letter requesting information dated 27 September 2024. A number of parties raised concerns about the impact of increased emissions that would result from the Proposed Development as well as compliance with the Climate Change Act 2008. Parties again also highlighted the CCC 2019 report as well as concerns about the measures in the Jet Zero Strategy and the impact of increased emissions not just from an increased number of flights but from construction and road and rail use resulting from an increase in the number of passengers.

254. The Secretary of State notes that the Applicant did not provide an overall assessment of cumulative impact of each of the potential indirect impacts identified for each of the carbon budgets either in its ES or in its response of 6 September 2024.

255. The Secretary of State considers that additional assessment of the matters identified at (a) to (e) is not necessary or capable of meaningful assessment in light of the approach identified in *Finch* for the reasons given by the Applicant. As to emissions from inbound flights, the Secretary of State is satisfied that including inbound flights is likely to amount to double counting of emissions and that it is appropriate to follow the approach adopted by the industry and national policy identified by the Applicant. As to the other indirect effects, the Secretary of State considers that there is insufficient evidence of a causal link between the Proposed Development and the emissions identified by the Applicant in its letter of 6 September 2024 for the reasons given by the Applicant. Although the Applicant has set out figures which could be attributed to these indirect effects, the Applicant has made it clear that these figures are likely to be

conservative and/or it is not clear whether any net increases in emissions will be caused by the Proposed Development. The question of whether these indirect effects can be attributed to the Proposed Development is therefore difficult to meaningfully assess (see *Finch* at 167).

256. However, notwithstanding the points made above, the Secretary of State considers that the additional effects identified by the Applicant are not significant on their own and this is another reason why it is not necessary to assess them or account for them in the Secretary of State's assessment of the weighting of this matter in the planning balance.

Determination of Significance of Emissions

257. The Secretary of State notes that a number of parties had not agreed that the impact of the GHG emissions of over 5 million tonnes CO₂e should be viewed as a minor adverse impact arguing that this assessment did not align with the latest IEMA GHG guidance section 6.3 and the magnitude of the carbon emission increase resulting from the Proposed Development [ER 3.12.67]. The Applicant stated that the assessment had been undertaken in accordance with best practice and had demonstrated that the Proposed Development would decarbonise in line with the Jet Zero Strategy and Decarbonising Transport trajectories which aligned with broader Government targets and showed that the percentage reduction in emissions between 2019 and 2050 would be nearly 49% for the Proposed Development compared to slightly over 49% for national aviation in the Jet Zero Strategy high ambition scenario [ER 3.12.68]. As such, the ExA was satisfied that the Applicant had demonstrated that the project would be compatible with the UK's current trajectory to Jet Zero and complied with up-to-date policy and good practice [ER 3.12.69]. As set out in the IEMA Guidance, there is no set threshold for significance but a project that is compatible with the budgeted, science-based 1.5°C trajectory and which complies with up to date policy and good practice reduction measures to achieve that has a minor adverse effect that is not significant.

258. Like the ExA, the Secretary of State is mindful that paragraph 5.82 of the ANPS states that if an increase in carbon emissions resulting from a project is so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets, this could be a reason to refuse development consent [ER 3.12.70]. Noting that emissions from international aviation and shipping have been included from the sixth Carbon Budget onwards, the ExA concluded that the emissions from aviation would remain less than 3% of the CCC's planning assumption up to the sixth budget period, and less than 1% of CB6. The ExA considered that, even if measures in the Jet Zero Strategy were not provided, the residual emissions would remain in the region of 3% of the planning assumption and less than 1% of the total budget for aviation in CB6 [ER 3.12.71 – 3.12.73]

259. The ExA was satisfied that the emissions from the Proposed Development would align with the Government's Jet Zero High Ambition trajectory and that the Applicant had provided evidence that the predicted carbon emissions, even without efficiency savings and the introduction of sustainable aviation fuels and zero emission aircraft, would not have a material impact on the ability of Government to meet its planning assumption for aviation or the budget for international aviation and shipping in CB6 [ER 3.12.74].

260. In addition, paragraph 159 of the NPPF states that new development should be planned for in ways that can help to reduce GHG emissions. Whilst the Applicant has made commitments to minimise and mitigate emissions, it remains the case that the Proposed Development would emit many millions of tonnes of GHG emissions into the atmosphere, which is not considered to meet the requirements of paragraph 159 of the NPPF. As such, the ExA considered that GHG emissions attract moderate weight against the making of the Order [ER 3.12.76].

261. The Secretary of State notes the ExA's reference to the CCC's planning assumption, but it is not accepted Government policy and there are no sectoral budgets within CB6 or any of the other carbon budget periods. The Secretary of State is however content that that additional emissions resulting from the Proposed Development will reduce overtime and agrees with the ExA that the impact on carbon budgets aligns with the reductions set out in Jet Zero and is content that the Proposed Development will not impact government's ability to meet its carbon budgets including CB6 and that even if all measures in Jet Zero are not delivered, Government still has the ability to bring forward other measures, noting the legal requirement to meet the carbon budgets.

Mitigation and Controls on Emissions from Airport Operations

262. The ExA raised questions around Government's stated target for zero emissions from airport operations including whether this future target could be met in principle. The Applicant stated that the majority of emissions at this point would be from generation of grid electricity, fire-fighting foams and de-icer, though it was exploring private connections to renewable energy sources outside of the application for the Proposed Development, with reductions largely dependent on Government policies to decarbonise the power system by 2035 [ER 3.12.79 – 3.12.80]. The ExA were satisfied with this and considered that it was highly likely the 2040 target for zero airport operations would be met [ER 3.12.80].

263. The Secretary of State notes the ExA asked a number of questions about the GCG Framework and its ability to manage emissions [ER 3.12.82-3.12.83]. Overall, the ExA were satisfied that the mechanism to stop growth of the airport in the GCG Framework should act as a 'backstop' [ER 3.12.82]. Where there was greatest risk of a Limit within the GCG Framework being exceeded, the Applicant stated that there was no point in revising them because they were a function of the extensive decarbonisation of airport operations that would be occurring by the late 2030s which was reflected in the need to update the GCG Framework. The ExA were satisfied with this explanation [ER 3.12.83].

264. Ultimately, the ExA was satisfied that proposed mitigation measures ensure that emissions from airport operations would not be unnecessarily high in line with policy requirements, regardless of the requirements of the GCG Framework. The ExA also considered that even the Faster Growth Case would not cause the effects of emissions on national carbon budgets to be significant [ER 3.12.86] and considered that the additional control on emissions from airport operations offered by the GCG Framework provided a little positive weight in favour of making the Order [ER 3.12.87].

Mitigation and Controls on Surface Access Emissions

265. The Secretary of State notes that TfL stated that offsetting should not be used for surface access emissions because the Applicant had substantial levers at its disposal to encourage sustainable mode shift [ER 3.12.88]. The Applicant noted it

could influence these Scope 3 emissions, but considered they were not directly within its control and drew attention to approaches to reduce surface access emissions in the Framework Travel Plan and Surface Access Strategy and the binding limits for modal shift in the GCG Framework [ER 3.12.89]. The ExA appreciated that the Applicant might not have control over the elements listed as Scope 3 emissions, but the ExA was satisfied the Applicant could influence some of these Scope 3 emissions (i.e. indirect emissions) through e.g. investment in other modes of transport for staff. It noted that the GCG does not require investigation of mitigation measures before moving to offsetting and the ExA considered the scheme could be improved by inclusion of this but concluded it could not be required [ER 3.12.93].

266. Regarding the outline GHG Action Plan to reduce surface access emissions, the ExA acknowledged that there were positive suggestions of strategies for future delivery of surface access mitigation measures but concluded that their delivery was uncertain beyond delivery of carpark to terminal shuttle buses being low carbon. The ExA concluded that the GHG Action Plan would provide only weak control over surface access emissions and that more detail would be required to ensure consistency with local and national policies [ER 3.12.91].

267. The Secretary of State notes that the ExA considered that the GCG Framework potentially disincentivises achievement of the requirements in paragraph 5.83 of the ANPS to ensure that the carbon footprint of the Proposed Development is not unnecessarily high as it would provide headroom for emissions to reach Thresholds and Limits before offsetting is required but noted that offsetting will get increasingly expensive and accepted that this should act as an incentive to the Applicant to mitigate emissions at source [ER 3.12.94].

268. The ExA concluded that emissions from surface access would not be significant even without mitigation against national budgets and whilst the controls in the GHG Action Plan were considered weak, the requirement to meet the Limits in the GHG Framework and the cost of offsetting should incentivise mitigation of surface access emissions and that local policies and paragraph 5.83 of the ANPS would be met [ER 3.12.95].

269. The Secretary of State notes that the ExA recommended that emissions were monitored for a year prior to serving notice under article 44 [ER 3.12.97] for the reasons set out in ER 3.12.96 and ER 3.12.98. The Secretary of State agrees that this requirement is needed to ensure emissions from surface access do not exceed limits in the first few years [ER 3.12.98]. With this requirement in place, the Secretary of State agrees with the ExA that emissions from surface access are a neutral matter and weighs neither for nor against the making of the Order [ER 3.12.99].

Non-CO₂ Emissions

270. The Secretary of State notes that the Applicant did not seek to quantify non-CO₂ Impacts for the reasons set out in ER 3.12.101. Discussions took place around a new aviation chapter of DfT's WebTAG published during the Examination that included new detail on the approach to non-CO₂ emissions [ER 3.12.102]. The Applicant acknowledged that it was possible to calculate non-CO₂ emission effects but maintained that it was not appropriate to do so because of the uncertainty involved, the exclusion of these from the Jet Zero trajectory and 'legal precedent' excluding them from other aviation planning applications [ER 3.12.104 – ER 3.12.108].

271. The Secretary of State notes that the ExA concluded that a range of multipliers could have been applied to provide an indication of the potential effects from non-CO₂ emissions through the costing of these. The ExA accepted that a WebTAG appraisal of non-CO₂ emissions is not currently a requirement for development and that the current test in policy is to compare GHG emissions against current emission trajectories and that these do not include non-CO₂ emissions. It also accepted that future controls on non-CO₂ emissions will be introduced at a national level and it would therefore be disadvantageous to require a single development to incorporate this in their assessment [ER 3.12.109]. As such, the ExA considered that the non-CO₂ emissions weighed neither for nor against the making of the Order [ER 3.12.110]. The Secretary of State agrees.

Other Matters

272. The Secretary of State notes the other matters discussed at ER 3.12.111 – 3.12.118. In each instance, she agrees with the ExA's conclusion on these matters.

The Secretary of State's Conclusions on Greenhouse Gases

273. The ExA considered that the assessment of GHG emissions had incorporated the trajectories and assumptions in the Jet Zero Strategy and Decarbonising Transport (2021) and that, ultimately, emissions would be controlled through the carbon budgets set in the Climate Change Act 2008. The Secretary of State agrees [ER 3.12.119].

274. The Secretary of State has had regard to the evidence of mitigation measures the Applicant has provided to ensure that the carbon footprint is not unnecessarily high from construction and operations, and agrees with the ExA that it has been demonstrated that the carbon emissions of the Proposed Development would be reduced through good design largely secured by the Design Principles to meet the requirements of local policies [ER 3.12.123].

275. As set out above, the Secretary of State agrees with the ExA that a monitoring requirement is necessary to ensure emissions set out for the core planning case are not higher than the Limits during Phase 1 or offset only years later [ER 3.12.126].

276. The Secretary of State notes that the ExA was satisfied that the carbon emissions from the Proposed Development would align with the Jet Zero Strategy's High Ambition trajectory and that the Applicant had provided evidence that the predicted emissions would not materially impact the Government's ability to meet its climate targets. The Secretary of State agrees but like the ExA, considers that the emissions from the Proposed Development would be significantly greater than the 'without proposal' scenario. The Secretary of State is aware that all emissions contribute to climate change. Whilst the Proposed Development will result in an increase in carbon emissions, she considers that the Proposed Development needs to be considered in the context of existing and emerging policy and legal requirements to achieve the UK's trajectory towards net zero and is satisfied that there would be no breach of such national or international obligations. As mentioned above, the Secretary of State does not consider the *Finch* judgement alters this position.

277. While noting that the Applicant has provided an assessment of potential indirect impacts from the Proposed Development on carbon as a result of the *Finch* ruling and that this increases the impact of the Proposed Development, for the reasons set out above, the Secretary of State does not consider that this or any other assessment to the approach taken in the Applicant's ES is necessary. The Secretary of State is

satisfied that the increase in carbon emissions resulting from the Proposed Development would not impact Government's ability to meet its legally binding carbon targets. Notwithstanding this position if the ruling in Finch were to require further consideration of the indirect impacts on carbon, the Secretary of State is satisfied with the approach taken by the Applicant and that this would still not impact Government's ability to meet its obligations legally binding carbon reduction targets or change the conclusion on this matter.

278. The Secretary of State agrees with the ExA's conclusion that the Proposed Development's effect on climate change through an increase in GHG emissions would be adverse and this carries moderate negative weight against the making of the Order [ER 3.12.127].

Health and Community

279. The Secretary of State notes that the ExA has referred back to other sections within the ExA report when assessing health and community impacts from the proposed development [ER 3.13.2]. The Secretary of State accepts that mitigation measures for topics covered including Air Quality, Noise and Vibration, Land Use, Socio-economics, Traffic and Transportation and Chilterns National Landscape would also serve to mitigate health effects [ER 3.13.22, 3.13.94] and therefore this section of the decision letter focuses on residual effects identified from those chapters [ER 3.13.22]. As a result, the Secretary of State does not go into detail on effects which have been considered and attributed weight under other relevant sections (land use, Socio-economic, Air Quality and Noise and Vibration).

280. The Secretary of State notes that Chapter 13 of the Applicant's ES includes a project specific assessment of health and community effects, and that cumulative health and safety effects are addressed, and subsequently ruled out, in ES Chapter 21 [ER 5.2.48].

281. The main issues considered by the ExA include:

- Baseline – Joint Strategic Needs Assessment
- 2019 Baseline
- IEMA Guidance 2022
- Traffic Impacts on the Buckinghamshire Road network
- Differential effects on vulnerable populations
- Community engagement and mitigation during operation
- Prospect House Day Nursery and Ace Sandwich Bar
- Monitoring of health effects

Baseline – Joint Strategic Needs Assessment (“JSNA”)

282. The Secretary of State notes the concerns raised by Central Bedfordshire Council regarding the need for additional consideration of local health assessments and their concerns on the reliance on national datasets which may exclude detail such as deprivation data and health and wellbeing strategies [ER 3.13.49].

283. Luton Borough Council confirmed that the Applicant had considered the Luton JSNA as part of its assessment [ER 3.13.51], and the Applicant in REP11-035 argued

that the study area was divided into local neighbourhood areas close to the airport and the wider area which included Central Bedfordshire [ER 3.13.50]. The ExA notes that significant adverse effects from noise would be primarily focused on the south Luton area and that although air quality effects would be more widely distributed, there were no significant effects predicted [ER 3.13.52].

284. The ExA considers that the Applicant's approach, taking into account Luton's JSNA and the datasets informing other local authority JSNAs, is proportionate, and in line with the Planning Practice Guidance which seeks to promote healthy and inclusive communities [ER 3.13.52]. The Secretary of State agrees.

- *2019 Baseline*

285. The Secretary of State notes the discussions held during the Examination regarding the use of 'actuals' noise baseline impacts on health against the use of consented noise baseline data [ER 3.13.54 - 3.13.56].

286. As set out in the 'Aviation Noise Modelling – the 2019 baseline section' of this decision letter, the Secretary of State is aware that the Applicant was operating in breach of day and night-time noise contours in 2019 [ER 3.18.112] and the Joint Host Authorities argued that the use of 2019 actuals baseline allowed a conclusion that noise levels would reduce in future scenarios during the day and night-time. In contrast, using a 2019 consented baseline indicated that there could be increases in future noise levels during the night-time [ER 3.13.55] and the ExA noted that using the 2019 consented baseline could allow a different conclusion to be drawn in that health outcomes may worsen at times in future years with the 2019 baseline [ER 3.13.57].

287. The Secretary of State acknowledges the Applicant's view that the use of either baseline would not affect the conclusion that there would be adverse likely significant effect on health and quality of life in noise policy terms and that significant effects would be avoided through provision of full cost of noise insulation scheme secured by compensation commitments [ER 3.13.56]. However, the Secretary of State agrees with the ExA that the difference in baseline data has implications in policy terms since paragraph 191 of the NPPF requires developments to "mitigate and reduce to a minimum potential adverse impact resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life" [ER 3.13.58].

288. The Secretary of State is mindful that the Applicant's noise insulation mitigation is not proposed to be rolled out in advance of flight increases and would be subject to a four-year delivery programme for eligible properties, where an offer is accepted. Furthermore, noise insulation offers no mitigation for outdoor noise in gardens or community spaces [ER 3.13.58].

289. In her letter dated 2 August 2024 the Secretary of State invited the Applicant to propose any further measures it considered could be brought forward to address the impact of outdoor noise on amenity. In its response dated 19 August 2024 (paragraph A3.3.2) the Applicant confirmed it did not consider that any further measures to address outdoor noise were practicable.

290. The Secretary of State agrees with the ExA's conclusion that the Proposed Development would not meet the NPPF, ANPS or NPSE objectives of avoiding significant adverse impacts on health and quality of life [ER 3.13.58] attracting great weight against the making of the Order.

IEMA Guidance 2022

291. The Secretary of State acknowledges concerns raised by Buckinghamshire Council regarding the Applicant's methodology used for assessing health and community effects [ER 3.13.59]. The Secretary of State acknowledges concerns raised by Buckinghamshire Council regarding the Applicant's methodology used for assessing health and community effects [ER 3.13.59].

292. The Secretary of State notes the ExA was content with the Applicant's health and community assessment methodology, which was consistent with that agreed at scoping stage, and that the Applicant has demonstrated that its approach is not inconsistent with the requirements of the IEMA guidance [ER 3.13.62].

293. Noting that Central Bedfordshire Council, Luton Borough Council and the Hertfordshire Host Authorities accepted the health and community methodology [ER 3.13.61] and that the ANPS and EIA Regulations require submission of a health effects assessment but do not specify that a particular methodology must be adopted, the ExA considered that the Applicant had undertaken an appropriate scope of assessment [ER 3.13.62]. The Secretary of State agrees.

Traffic Impacts on the Buckinghamshire road network

294. The Secretary of State notes that additional information from the Applicant was submitted following a request by the ExA to address concerns raised by Buckinghamshire Council regarding indirect health effects from traffic movements [ER 3.13.63 and ER 3.13.65].

295. The ExA found no reason to disagree with the Applicant's Covid 19 Environmental appraisal in respect of air quality and noise, which had identified no significant effects on the road network in Buckinghamshire from additional traffic. On this basis, the ExA was content that the Applicant's approach to health assessment of early morning traffic flows is consistent with paragraph 1.37 of the ANPS [ER 3.13.66]. The Secretary of State agrees.

Differential effects on vulnerable populations

296. The Secretary of State notes the representations made regarding differential effects on vulnerable populations [ER 3.13.67 - 3.13.68]. The Secretary of State agrees with the ExA that the Applicant's Equalities Impact Assessment, health and community, air quality and noise and vibration chapters consider impacts on vulnerable groups, and that the Equalities Impact Assessment and noise and vibration chapter include relevant mitigation in this respect [ER 3.13.70].

297. Like the ExA the Secretary of State considers that the Applicant has provided sufficient information to inform the consideration of effects on vulnerable groups [AS-129, Table 10.1], consistent with the requirements of paragraph 1.35 of the ANPS [ER 3.13.70].

298. Matters relating to Human rights and Public Sector Equality Duty are considered in the Human Rights and Public Sector Equality Duty sections of this decision letter.

Community engagement and mitigation during operation

299. The Secretary of State acknowledges the concerns raised by a number of Interested Parties in regard to the CoCP community engagement proposals regarding

the negative impact this may have on mental wellbeing for residents during the operation of the Proposed Development [ER 3.13.71].

300. The Applicant set out that the airport operator is committed to continued community engagement. It employs a Community and Corporate Social Responsibility manager who is responsible for managing community engagement associated with the operation of the airport [REP10-009] and that ongoing engagement such as that carried out by the current operator was an existing mechanism to mitigate effects on mental wellbeing [ER 3.13.72].

301. The ExA accepted the Applicant's reasoning that perception and uncertainty effects would not apply during operation as such effects would be realised by that stage. The ExA considered that the Applicant has assessed factors that affect wellbeing such as noise annoyance and sleep disturbance and has provided compensatory noise mitigation in the form of insulation to address such effects [ER 3.13.73]. The ExA concluded that the Applicant's approach taken to operational effects is consistent with the requirements of the ANPS (paragraphs 4.72 and 4.73). The Secretary of State agrees.

Prospect House Day Nursery and Ace Sandwich Bar

302. The Secretary of State notes the conclusion in the ES that the loss of Prospect House Day Nursery, without mitigation or replacement, would have an impact on access to services and a major adverse significant effect on mental health and wellbeing [ER 3.13.74].

303. As outlined in ER 3.13.75, the Secretary of State agrees with the ExA, who consider that the section 106 agreement offers a pragmatic solution for the reprovision of the Prospect House Day Nursery that requires further assessment prior to demolition of the nursery to ensure that the Applicant re-provides the facility or takes alternative steps approved by Luton Borough Council where the assessment identified a replacement would be required. It is further noted by the Secretary of State that the ExA regarded the Applicant's approach as being consistent with the requirements of paragraphs 4.72 and 4.73 of the ANPS [ER 3.13.79].

304. The Secretary of State also accepts the conclusion from the ExA that no further consideration of Ace Sandwich Bar is required as the premises have been vacated [ER 3.13.79].

305. The Secretary of State therefore agrees with the ExA that effects on these receptors would be neutral and do not weigh for nor against the making of the Order [ER 3.13.101].

Monitoring of health effects

306. The Secretary of State notes the discussions and disagreements during the Examination with regard to future health monitoring [ER 3.13.80 - 3.13.85]. The Secretary of State agrees with the ExA's conclusion that the Applicant's ES has provided an assessment of effects on the local community and that there is no specific requirement in the EIA Regulations to collect and report additional health baseline data in future years [ER 3.13.86]. Furthermore, the GCG Framework allows for operational noise and air quality monitoring and remedial action without duplication of monitoring arrangements [ER 3.13.87 - 3.13.88].

Secretary of State's conclusions on Health and Community

307. The Secretary of State agree with the ExA that the information provided by the Applicant for the assessment of health and community impacts is sufficient for the purposes of decision making, appropriate consideration has been afforded to protected characteristic groups, and that the monitoring and remedial action for health determinants through the GCG Framework is consistent with policy [ER 3.13.90 - 3.13.95].

308. The ExA considered that the Proposed Development's ambitions to increase use of London Luton Airport and the consequential economic and consumer benefits are consistent with APF, ANPS, MBU policies and LBC Policy LLP1 and the employment and consumer benefits attract great weight for the making of the Order in its consideration of socio-economic effects and has not been given additional weight here [ER 3.13.97]. However, MBU is clear that this is subject to "taking careful account of all relevant considerations, particularly economic and environmental impacts and proposed mitigations" [ER 3.13.91].

309. The Secretary of State accepts that in line with policies, the consequential economic and consumer benefits of the proposal need to be appropriately weighed against the impacts such as noise effects on health and quality of life [ER 3.13.91, 3.13.92].

310. The Secretary of State agrees with the ExA that although ES Chapter 13 did not identify unacceptable levels of harm to health, in the absence of mitigation significant adverse aviation noise effects were predicted during operation, which could result in worsening health outcomes due to increase noise and resultant sleep disturbance and annoyance, as well as effects on amenity and tranquility [ER 3.13.97].

311. ES Chapter 13 [REP10-009] identified that moderate significant adverse health effects due to perception and uncertainty during planning and construction of the Proposed Development would arise but suggested that there was weak evidence for this effect [ER 3.13.23]. To address this, it proposed mitigation in the form of community engagement measures in the CoCP. The ExA considers that the weak evidence base means that these effects would attract a little negative weight against the making of the Order [ER 3.13.98]. The Secretary of State agrees.

312. ES Chapter 13 identified residual non-significant minor adverse health effects arising from:

- displacement of businesses within Green Horizons Park and President and Percival Way following compensation;
- impacts of the construction workforce on community cohesion and access to services, accounting for provision of occupational healthcare facilities; and
- impacts of the operational workforce on the housing market which could arise due to the operational workforce, taking into account the Employment and Training Strategy [ER 3.13.99].

313. The Secretary of State agrees with the ExA that each of these effects attract little negative weight against the making of the Order [ER 3.13.100].

314. The ExA concludes that the Proposed Development meets the broad requirements of national and local policy but is only partially compliant with the requirements of local policy LLP6 in respect of air quality and noise related health effects. The Secretary of State disagrees with the ExA and considers that in relation to residual harm on health and community from effects, not already accounted for in

other sections of this decision letter, collectively attract only little negative weight against the making of the Order [ER 3.13.102].

Historic Environment

315. The Applicant's assessment of the historic environment is primarily contained within Chapter 10 of the ES. This identifies that the Proposed Development would cause the following significant adverse effects:

- Temporary moderate adverse effects due to construction activities on Wandon End House and Wandon End Farmhouse Grade II Listed Buildings.
- Moderate adverse effects through operation due to an increase in aviation noise which would detract from the rural character of Luton Hoo Grade II* Registered Park and Gardens ("RPG").
- Permanent moderate adverse effects on archaeological remains including an Iron Age and Roman settlement site (Historic Environment Record ("HER") 108080) and cropmarks of possible late prehistoric and Roman activity (HER 17218 and HER 17219).
- Moderate adverse effects through construction activities on potential archaeological features that could be identified from the additional trial trenching [ER 3.14.11].

316. The Secretary of State notes that the Applicant concluded that the Designated Heritage Assets set out at ER 3.14.14 would experience less than substantial harm at the lower end of the spectrum and that with the design of the Proposed Development and the proposed embedded mitigation measures [ER 3.14.15], there would be less than substantial harm to the significance of Designated Heritage Assets. When this harm was weighed against the public benefits of the Proposed Development, the Secretary of State notes that the Applicant concluded that the Proposed Development complied with current policy and afforded this matter limited negative weight in the planning balance [ER 3.14.16].

317. The Secretary of State has had regard to the representations made concerning the impact of the Proposed Development on Heritage Assets as summarised at ER 3.14.17, together with the representations made by Historic England [ER 3.14.18] and the conclusions in Central Bedfordshire Council's LIR [ER 3.14.19]. The Secretary of State notes that the main issues considered by the ExA during the Examination were:

- methodology;
- assessment of effects and harm to Designated Heritage Assets;
- assessment of effects to non-designated heritage assets; and
- approach to mitigation [ER 3.14.20].

Methodology

318. The Secretary of States notes the questions posed by the ExA regarding the methodology used to assess the impacts of noise on heritage assets, including the extent to which the increased frequency of flights over assets had been considered by the Applicant. While the Secretary of State acknowledges that the methodology used by the Applicant for assessing impacts from noise was in line with current guidance and best practice and statutory consultees (including Historic England) had agreed,

she notes that the Hertfordshire Host Authorities did not agree that quietness did not contribute to the setting of specified Heritage Assets, and considered that tranquillity was an important component of the setting of RPGs [ER 3.14.26]. Like the ExA, the Secretary of State agrees with the concerns raised by North Hertfordshire District Council and Hertfordshire County Council regarding the Applicant's approach to assessing effects on quietness and setting [ER 3.14.30 and ER 3.14.32].

319. The ExA accepted that changes in noise contours were a useful means to establish Likely Significant Effects at Designated and Non-Designated Heritage Assets and concluded that the Applicant's assessments adequately set out "what matters and why" in terms of the heritage significance and setting of the assets affected and the effects of the Proposed Development upon them [ER 3.14.33]. The ExA considered that in order to justify the Applicant's conclusions on harm to an asset's heritage significance, impacts to certain Designated Heritage Assets would have benefited from a more detailed qualitative analysis of their noise environment and the degree to which this makes a contribution to the significance of the asset or allows the significance to be appreciated [ER 3.14.34]. The Secretary of State agrees. In reaching this conclusion, the Secretary of State notes that the Applicant acknowledged that a specific assessment of increased frequency of flights would have been useful to aid understanding of the effect of significant increases in noise levels and where this would have a significant effect on a Heritage Assets. However, the Applicant had not undertaken such a specific assessment as no significant increases in noise levels had been identified [ER 3.14.27].

320. Having had regard to Historic England's Good Practice Advice Note 3: The Setting of Heritage Assets which sets out that while the use of sensitivity matrices and scoring systems as part of the EIA process may assist analysis to some degree, "as setting and views are matters of qualitative and expert judgement, they cannot provide a systematic answer" [ER 3.14.32], the Secretary of State notes and agrees with the approach taken by the ExA who, in the absence of information, carried out a number of site visits to Designated Heritage Assets [ER 3.14.41, 3.14.55, 3.14.68, 3.14.74, 3.14.102, 3.14.124, 3.14.129] and sought additional information from the Applicant and parties [ER 3.14.71, 3.14.113, 3.14.122] and reached its own conclusions on harm for a number of Designated Heritage Assets which are considered below.

Designated Heritage Assets

Listed Buildings

321. The Secretary of State is content with the ExA's reasoning and its conclusions in relation to the following listed buildings:

- Wigmore Hall Farmhouse and Hart House where the ExA agreed with the Applicant that there would be a minor adverse effect on Wigmore Hall Farmhouse due to the distance between the proposed works and the asset and this would result in less than substantial harm to the significance of the Designated Heritage Asset. With regard to Hart House, the ExA agreed that the Proposed Development would have no significant effects or lead to any harm to its heritage significance given the existing built environment within its setting and the separation distance between the asset and the Proposed Development [ER 3.14.37-42].
- Wandon End House and Wandon End Farmhouse where the ExA considered that the Proposed Development would not result in harm to the architectural

interest of these assets and any harm would be due to changes within their setting through construction of the replacement open space and planting of hedgerows [ER 3.14.43-3.14.46].

- The Old Homestead (Grade II* listed) where the ExA considered that, in addition to the harm identified by the Applicant during construction, the increase in aircraft flying overhead would lead to further intrusion into the asset's setting and how it would be appreciated such that less than substantial harm to its heritage significance would occur [ER 3.14.47-51].
- Breachwood Green Baptist Church (Grade II listed) where the ExA concluded that the increased number of overflights would lead to further intrusion to the asset's relatively tranquil setting, particularly the church yard which contributes to its significance and how it is appreciated and used and considered that this harm would be less than substantial [ER 3.14.52-56].
- Parish Church of St Mary, Luton (Grade I listed) where the ExA found it had no reason to disagree with the Applicant's assessment that less than substantial harm would arise to the heritage significance of this asset [ER 3.14.57-58].

322. The Secretary of State further notes the ExA's consideration of the Applicant's findings against the remaining listed buildings within the 2km and wider study areas not referred to in detail. The ExA agreed with the Applicant's conclusions that the Proposed Development would not result in harm to the significance of those assets [ER 3.14.59]. The Secretary of State finds no reason to disagree.

Conservation Areas

323. The Secretary of State is aware that the Environmental Statement identified six conservation areas within the study area as set out at ER 3.14.61 – 63. The Secretary of State notes the ExA's consideration of each of these Conservation Areas and agrees with its reasoning and conclusions on each of these matters as set out at ER 3.14.67-84. Beyond the 2km study area, Hitchen Conservation Area and Hitchin Hill Path Conservation Area would be located within the 250m study areas of the off-sited highways interventions [ER 3.14.64].

Conservation Areas within Luton Borough Council

324. The Conservation Areas are set out in ER 3.14.61. The ExA noted that these areas were characterised by an urban background noise environment and in the absence of any disagreement agreed with the Applicant's assessment that there would likely be a minor adverse effect and less than substantial harm to the heritage significance [ER 3.14.68].

Conservation Area in North Hertfordshire District Council

325. While Bendish Conservation Area was listed in the impact assessment table of the ES, the ExA noted it did not appear to have been considered in the assessment [ER 3.14.70]. In response to the ExA's questions, the Applicant stated that the change in noise levels had been assessed as negligible and consequently, no specific assessment of the aural intrusion caused by frequent overflights had been undertaken [ER 3.14.71]. The ExA concluded that based on the information in Figures 14.14-14.17 of REP4-037, Bendish Conservation Area could experience a marked increase in overflights and was not satisfied that the Applicant's response sufficiently addressed its queries, commenting that Bendish Conservation Area would have benefitted from

more detailed qualitative analysis. In the absence of this information, the ExA concluded that the impact of increased aural intrusion from the increased frequency of flights and the extent to whether this could further erode the tranquil character of the conservation area had not been fully considered by the Applicant [ER 3.14.73]. The Secretary of State concurs.

326. The Secretary of State notes that, based on the application documents and the observations it made during site inspections, the ExA found that the pattern of development around a village green, architectural interest of the dwellings and the relatively tranquil character of the conservation area, notwithstanding its location under the flightpath, all made a contribution to the heritage significance of Bendish Conservation Area. The ExA disagreed with the Applicant and concluded that as the rural tranquil character and setting of Bendish Conservation Area was likely to be eroded by both visual and noise impacts from increased overflights [ER 3.14.74] and considers that less than substantial harm would arise [ER 3.14.75]. The Secretary of State finds no reason to disagree.

327. Central Bedfordshire Council initially raised concerns that there was no consideration of the impact on the Luton Hoo Hyde Conservation Area but later accepted that it was appropriate for it to be considered holistically along with other designated heritage assets that form part of the wider RPG designation, and this is considered further below [ER 3.14.76].

Hitchin Conservation Area and Hitchin Hill Path Conservation Area

328. While the Applicant scoped Hitchin Conservation Area and Hitchin Hill Path Conservation Area out of the ES as it concluded there would be no harm to the heritage significance [ER 3.14.77], the Secretary of State notes that the Landscape and Visual Impact Assessment identified potential significant effects due to the permanent loss of some mature trees to accommodate the proposed highway works in Hitchin [ER 3.14.78].

329. Given the uncertainty regarding the extent of the proposed highway works in Hitchin and how these works may affect the trees, the ExA considered that it was not possible to conclude what the level of harm would be and therefore suggested additions to article 22 of the draft Order that would restrict powers to fell trees within a conservation area or subject to a tree preservation order unless identified in the landscaping schemes. Noting that the Applicant and Joint Host Authorities accepted these changes with minor additions [ER 3.14.81], like the ExA, the Secretary of State is satisfied that article 22 and requirements 9 and 10 in the draft Order would provide a suitable mechanism for relevant authorities to assess the extent of the tree felling and any further tree planting required to mitigate their loss and that this would preserve the character or appearance of the conservation areas [ER 3.14.82]. Were any harm to materialise, the ExA considered that this would result in less than substantial harm, taking into account the contribution the trees make to the character and appearance of the conservation areas during site inspections [ER 3.14.83]. The Secretary of State agrees.

Other Conservation Areas

330. Although the Secretary of State has had regard to the concerns raised regarding overflights over Dunstable Conservation Area, she notes the ExA's observations that the conservation area was situated in the centre of the town in an urban environment where its heritage value largely related to its architectural and

historic interest. The ExA concluded that given the separation distance between the asset and the flightpath, its heritage value and as Central Bedfordshire Council did not request its inclusion, that there would be no effects or harm to the heritage significance of this asset [ER 3.14.84]. The Secretary of State finds no reason to disagree.

Scheduled Monuments

331. The Secretary of State notes that the two Scheduled Monuments scoped into the Applicant's assessment were Someries Castle and Six Hills Roman barrows [ER 3.14.85]. While the Applicant identified a number of other Scheduled Monuments within the study area, the Secretary of State notes that they were scoped out of the ES on the grounds that the location of the Proposed Development did not contribute to the setting of the assets and no impacts were anticipated to arise from the Proposed Development. No disagreement was raised by Interested Parties in relation to this conclusion [ER 3.14.103] and no other Scheduled Monuments were raised as requiring to be scoped in [ER 3.14.103]. Noting the location of these assets and their heritage significance, the ExA found no reason to disagree with the Applicant's findings and accepts that there would be no harm to the heritage significance of these assets and that their settings would be preserved [ER 3.14.104]. The Secretary of State concurs.

Somerries Castle Scheduled Monument

332. The Secretary of State agrees with the ExA that the description of the significance of Somerries Castle Scheduled Monument as set out in Chapter 10 of the ES and Appendix 10.1 provides an accurate and reasonable description of the significance of this Heritage Asset and the contribution that its setting makes to that significance [ER 3.14.94].

333. The Secretary of State notes the adverse effects predicted for Somerries Castle as summarised at ER 3.14.87 and Historic England's position that the harm would be less than substantial to the asset's significance [ER 3.14.88]. She further notes that in response to her letter dated 2 August 2024 requesting further information, the Applicant, in its letter dated 19 August 2024, maintained its position that although the Fire Training Ground would be visible in the asset's visual setting, its presence would represent minimal change resulting in a minor adverse effect, which it considered was not significant. While the Applicant concluded that there would be less than substantial harm to the heritage significance of Somerries Castle [ER 3.14.87], the Secretary of State is aware that Central Bedfordshire Council considered that the Fire Training Ground would be intrusive and incongruous, and that it attached great importance to the significance of the asset's setting. Further, it considered that the harmful visual impact of the Fire Training Ground would be contrary to the aim of "sustaining or enhancing the significance of a heritage asset and the contribution of its setting" as set out in the Historic Environment Planning Practice Guidance [ER 3.14.90].

334. At the close of Examination, the Secretary of State notes that the location and visual impact of the Fire Training Ground on Somerries Castle remained a principal area of disagreement between the Applicant and Central Bedfordshire Council [ER 3.14.93]. The ExA considered that the Proposed Development would further erode the visual appearance and the setting of Somerries Castle through the increased noise and presence of further built form, particularly the Fire Training Ground which would be visible in views towards the asset. Having conducted a site inspection, the ExA concluded that the heritage significance of this asset was strongly characterised by its

remaining brick structure and while longer range views may have contributed to understanding that significance previously, this had been significantly eroded by more modern built form [ER 3.14.95]. The Secretary of State finds no reason to disagree.

335. The Secretary of State agrees with the ExA that the presence of the Fire Training Ground would appear as a prominent and incongruous feature in background views when looking towards the Someries Castle from the west. The ExA considered that this would represent a minor adverse impact to its setting given the presence of existing built form surrounding the asset and as the Fire Training Ground would further erode the visual appearance of the Scheduled Monument and its setting, disagreed with the Applicant who maintained its setting would be preserved [ER 3.14.96] The Secretary of State concurs. The Secretary of State agrees with the ExA's conclusion that an appreciation of the heritage significance of the asset would be damaged by further built form and that, along with the increased noise levels, this would result in less than substantial harm to the heritage significance of the asset [ER 3.17.97 and ER 3.14.100]. The Secretary of State considers the impact of the lighting of the Fire Training Ground in the 'light pollution' section of this letter.

336. The Secretary of State has had regard to the concerns raised by Central Bedfordshire Council who maintained that it was unclear how harm arising from brick erosion from air pollutants from the Fire Training Ground would be mitigated [ER 3.14.93] and that further detail was required in relation to air quality monitoring for this asset [ER 3.14.89]. Taking into account that no substantive evidence to counter the Applicant's findings or its comments on monitoring proposals have been provided, and noting the observations made by the ExA who observed a fire training routine and the distance from Someries Castle and periods of time for operation of the fire training events, the Secretary of State agrees with the ExA that there would be a limited impact on Someries Castle and that suitable measures for on-going monitoring of air pollution have been included in the Cultural Heritage Management Plan ("CHMP") [ER 3.14.99].

337. Notwithstanding this conclusion, in her letter dated 2 August 2024, the Secretary of State invited the Applicant to propose any further measures that could be brought forward to further address the impacts on Heritage Assets resulting from the Proposed Development. In its response dated 19 August 2024, despite maintaining there was no need for additional mitigation, the Applicant confirmed it had agreed to commission a survey of Someries Castle and to include it as an air quality receptor, as detailed in section 10.2.2 of the CHMP. The Applicant stated that emissions at the asset's location would be reported on an annual basis as part of the continued air quality monitoring around the airport, as detailed in the Outline Operational Air Quality Plan as secured by requirement 38 of the ExA's recommended Order and the air quality emissions data would be shared with the relevant local planning authority who could use this data to help inform future conservation management plans for the castle. The Secretary of State welcomes these additional measures proposed by the Applicant and is satisfied the delivery of these measures can be secured within the Order requirements, overall, the further mitigation measures proposed by the Applicant in relation to air quality do not change the Secretary of State's view and she agrees with the conclusion of the ExA that the heritage significance of the asset would still be damaged by further built form and increased noise levels and that this would result in less than substantial harm to the heritage significance of the asset [ER 3.14.97].

Six Hills Roman Barrows Scheduled Monument

338. The Secretary of State notes the observations made by the ExA and that the ExA was satisfied with the Applicant's conclusion that although there was a predicted increase in the noise baseline at this location, this would be a minor change to the asset's noise environment, which would not affect its setting or impact its heritage value [ER 3.14.101]. Noting that no concerns were raised by Interested Parties, the ExA concluded that the Proposed Development would result in no harm to the heritage significance of this asset and its setting would be preserved [ER 3.14.102]. The Secretary of State agrees with this assessment.

Registered Park and Gardens

Luton Hoo RPG

339. The Secretary of State notes the concerns raised by Historic England who considered that the Proposed Development would introduce bulky and tall structures within the wider setting of the RPG [ER 3.14.109] and the concerns raised by Central Bedfordshire Council regarding the visual impact of proposed built structures and lighting on the landscape, particularly from the Fire Training Ground and Car Park P1 [ER 3.14.111].

340. Noting the ExA's observations that from Luton Hoo RPG the visibility of existing buildings and structures within London Luton Airport was limited, the Secretary of State is content with the ExA's conclusion that the construction of further built form visible from the RPG would result in a negative effect on the visual experience from the park. On the basis that there was no disagreement between Interested Parties that this would result in harm to the heritage significance of the RPG, although this harm would be less than substantial, and on the information the ExA read and heard during its site inspections, the ExA agreed that the harm would be less than substantial [ER 3.14.114]. The Secretary of State agrees.

St. Pauls Walden Bury RPG

341. The Secretary of State notes that having visited St. Pauls Walden Bury RPG and observed the character, appearance, setting of the park and the extent of noise audible from flying aircraft, the ExA largely agreed with the Applicant's description of its character and setting as set out at ER 3.14.115. However, the ExA considered the rural tranquil setting of the RPG was an important component in appreciating its heritage significance, the individual Designated Heritage Asset located within it and contributed to its heritage significance [ER 3.14.124]. The Secretary of State finds no reason to disagree.

342. The Secretary of State is aware that, although the Applicant predicted an increase in noise during operation in Phases 2a and 2b of the Proposed Development, it considered that this would result in a negligible change to the park's noise environment and would not affect its setting or impact its heritage value. Accordingly, the Applicant's assessment concluded that there would be no significant impact or effect on this RPG [ER 3.14.118]. In reaching this conclusion, the Secretary of State notes that no specific analysis of aural intrusion from the increased frequency of flights was undertaken by the Applicant [ER 3.14.122]. As this is a Grade I listed RPG and considering the importance national legislation attaches to this designation, the Secretary of State agrees with the ExA that more detailed qualitative analysis should have been carried out by the Applicant [ER 3.14.125] as requested by the Hertfordshire Host Authorities who considered that the issue of quietness and overall assessment of effect in relation to the setting due to aircraft noise needed to be

reassessed [ER 3.14.120]. The Secretary of State agrees with the ExA that the impact of increased aural intrusion over the northern part of the RPG from the increased frequency of flights, and the extent to which this could further erode its tranquil character, has not been fully considered nor recognised in the Applicant's assessment [ER 3.14.125].

343. The Secretary of State notes that the ExA visited this site and observed the sound of overflying aircraft and considered the noise in the northern part of the RPG to be intrusive in a relatively quiet and tranquil rural setting in contrast to the ES which stated that the noise from overflights did not intrude to such an extent as to detract from the asset's rural character [ER 3.14.126]. The Secretary of State finds no reason to disagree. The ExA concluded that based on the information in the Applicant's ES, the asset could experience a significant increase in the number of overflights and considered that the extent of the increase would further erode the rural character and tranquil setting the asset experiences and this would further disrupt the appreciation of the asset [ER 3.14.127]. The Secretary of State concurs and like the ExA does not agree with the Applicant's assessment that there would be a negligible change to the RPG's noise environment for the reasons stated in ER 3.14.128 and finds that the Proposed Development would result in harm to the heritage significance of this asset, although this harm would be less than substantial [ER 3.14.128].

Other RPGs

344. Although several other RPGs were identified as potentially being affected by the Proposed Development, with the exception of Knebworth Grade II* RPG, the Secretary of State notes that no concerns were raised by Interested Parties in relation to these [ER 3.14.129].

345. The Secretary of State is aware that Hertfordshire Host Authorities considered that effects to the Knebworth Grade II* RPG should have been considered further in the assessment. Although the Hertfordshire Host Authorities did not progress this matter during the Examination, the Secretary of State notes that the ExA visited this site and observed the potential noise impacts and satisfied itself that there would be no harm to the heritage significance of Knebworth Grade II* RPG [ER 3.14.129]. The Secretary of State has no reason to disagree.

346. Considering the location of other RPGs in relation to the airport and flight paths, the Secretary of State concurs with the ExA that there is no reason to disagree with scoping the assets out of the assessment or the findings of no effect to Putteridge Bury Grade II RPG [ER 3.14.130].

Assessment of effects to Non-Designated Heritage Assets

347. Although the Secretary of State is mindful of the fact that there are 108 Non-Designated Heritage Assets located within the study area and 25 within the Order limits, she notes that only two were considered in more detail during the Examination; a Late Iron Age Roman Settlement and the site of a possible Roman building [ER 3.14.131 - 3.14.132].

348. The Secretary of State is aware that while the Applicant initially proposed to retain the Late Iron Age Roman Settlement in situ, Luton Borough Council advised that excavation would be preferable due to the limited survival of archaeological remains and the limited likelihood of them being preserved successfully during construction [ER 3.14.133]. Like the ExA, the Secretary of State is content with Luton Borough Council's responses to its questions, the justification for the loss against

relevant planning policies and whether the asset was demonstrably of equivalent significance to a Scheduled Monument, and is satisfied that the loss of this asset would not need to be assessed against policies in the NPPF in the same way as for a Designated Heritage Asset [ER 3.14.134 and 3.14.138].

349. The Secretary of State recognises that the Proposed Development would result in the loss of the Late iron Age Roman Settlement and is aware that in accordance with LLP Policy LLP30C, clear and convincing justification must be provided to support any harm or loss to a Heritage Asset [ER 3.14.137]. Noting Luton Borough Council's detailed justification for seeking the removal of the asset as summarised at ER 3.14.138, like the ExA, the Secretary of State is satisfied that clear and convincing justification has been provided for the loss of the Late iron Age Roman Settlement. In reaching this decision, the Secretary of State has had regard to the fact that the CHMP contains a detailed scope of works for archaeological excavation and a programme of recording, which would be in accordance with LLP Policy LLP30 parts E and F [ER 3.14.139].

350. With regard to the site of a possible Roman building, Hertfordshire County Council initially considered that it had not been sufficiently assessed whether the building was present within the Main Application Site or not was insufficient and the potential adverse environmental effects was unreported. The Secretary of State notes that following updates to the Cultural Heritage Management Plan, Hertfordshire County Council were satisfied that these concerns were resolved [ER 3.14.135].

351. The Secretary of State notes that there were no outstanding concerns regarding the assessment of Non-Designated Heritage Assets at the close of the Examination [ER 3.14.136] and overall, the ExA attributed a little weight against making of the Order in respect of the loss of the Late Iron Age Roman Settlement (HER 10808) [ER 3.14.139]. The Secretary of State is content with this conclusion.

Approach to Mitigation

CHMP

352. The Secretary of State has considered the CHMP and is content that at the close of Examination, there were no outstanding matters with regard to the measures contained within and that these measures would be secured by requirement 16 of the draft Order [ER 3.14.144].

Financial Contribution at Luton Hoo RPG

353. The Secretary of State notes that Historic England sought mitigation in the form of financial contributions towards the conservation management of Luton Hoo Estate, but the Applicant did not consider there was sufficient justification for a section 106 agreement [ER 3.14.145]. Historic England suggested that in the absence of mitigation measures being proposed by the Applicant it would be appropriate for the contribution being put towards the measures outlined at ER 3.14.146. This proposal was opposed by the Applicant who maintained that there was insufficient justification for a contribution [ER 3.14.147]. Central Bedfordshire Council stated that it was unclear how any benefits that might be derived from financial contributions would be practically secured and delivered, that financial contributions should address specific issues where impact and harm could be actively reduced and that financial contributions to offset measures would not constitute mitigation [ER 3.14.148]. The Secretary of State notes that the Applicant maintained its position in its letter dated 19 August 2024 (in response to the Secretary of State's information request dated 2 August 2024).

354. The ExA concluded that in the absence of more information explaining the level of contribution required, how any contribution would be used to mitigate harm from the Proposed Development and a policy for justifying a contribution, it had not been demonstrated how such a financial contribution would be used to mitigate the harm nor how this could be reasonably related in scale and kind to the development, in order to meet the planning obligation tests at paragraph 57 of the NPPF [ER 3.14.154]. The Secretary of State agrees with this conclusion.

Mitigation of buildings

355. The Secretary of State notes that Historic England suggested that the visual effects of the proposed buildings and structures and the impact they may have in terms of setting to Luton Hoo RPG and Someries Castle might be mitigated to some extent through design [ER 3.14.150]. Noting that the Design Principles were updated throughout the Examination [ER 3.14.151] and at the close of the Examination no areas of disagreement on this matter remained between the Applicant and Historic England [ER 3.14.152], like the ExA, the Secretary of State is satisfied that the Design Principles adequately incorporate the measures requested by Historic England [ER 3.14.155].

356. The Secretary of State notes that Central Bedfordshire Council retained concerns at the close of the Examination regarding the securing of design mitigation on buildings [ER 3.14.153]. The ExA was satisfied that design in accordance with then Design Principles would be secured by requirement 6 of the draft Order and that Central Bedfordshire Council would have the opportunity to provide comments as part of that process [ER 3.14.155]. The Secretary of State concurs.

357. In the Secretary of State's consultation letter dated 2 August 2024, the Applicant was invited to propose any additional measures that may address the predicted impacts on Heritage Assets resulting from the Proposed Development. In its response dated 19 August, the Applicant reiterated its position that it considered that the measures put forward during the Examination were sufficient to address all potential impacts on heritage assets and these measures are secured in the CHMP.

The Secretary of State's Conclusions on Historic Environment

358. Like the ExA, the Secretary of State has had regard to the desirability of preserving Designated Heritage Assets including listed buildings and their settings, the character or appearance of Conservation Areas and Schedule Monuments or their settings in accordance with by regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 [ER 3.14.156].

359. The Secretary of State agrees with the ExA that the Applicant has largely provided a detailed assessment of the likely significant effects on Designated Heritage Assets arising from the construction and operation of the Proposed Development and concurs with the Applicant's findings of likely significant effects and that less than substantial harm would occur to the assets listed at [ER 3.14.157]. Further, the Secretary of State agrees that the assets listed at [ER 3.14.158] would experience less than substantial harm to their heritage significance.

360. The Secretary of State acknowledges the relevant policy requirements set out at ER 3.14.160 as reflected in the development plans for Luton Borough Council, Central Bedfordshire Council and North Hertfordshire Council [ER 3.14.161] and agrees with the ExA that the less than substantial harm identified to heritage assets,

due to a number of the assets being assets of the highest significance, attracts great weight against the making of the Order [ER 3.14.162]. However, this harm must be weighed against the public benefits that the Proposed Development would deliver [ER 3.14.163]. The Secretary of State weighs this harm in the Planning Balance section of this letter, concluding that the extensive consumer and economic benefits the Proposed Development would deliver would outweigh the harm to heritage assets.

Landscape and Visual

361. The Secretary of State notes the Applicant's Landscape and Visual Impact Assessment at ES Chapter 14 and supporting documents, as summarised by the ExA at ER 3.15.17 – 3.15.28. The Secretary of State is aware that the Applicant's assessment identified that there would be residual significant adverse effects on the following landscape receptors:

- the landform east of London Luton Airport;
- on the townscape of Hitchin (largely due to loss of trees for highway interventions);
- on several landscape character areas, including Luton Borough Landscape Character Area 13 (Wigmore Rural) and Hertfordshire Landscape Character Area 200 (Peters Green Plateau); and
- the aesthetic and perceptual characteristics of the landscape within the Chilterns National Landscape due to the increase in aircraft movements [ER 3.15.23].

362. Significant adverse effects to people's visual amenity were also identified during both the construction and operational periods of the Proposed Development on the receptors set out at ER 3.15.27. However, following construction and mitigation, significant residual adverse visual effects were identified as remaining at the following receptors:

- Wigmore Valley Park;
- Raynham Way Recreation Ground and Community Centre;
- Breachwood Green;
- The Heath and Lye Hill;
- Darleyhall;
- Users of the Chiltern Way Cycle Route;
- Users of the Lea Valley Cycle Route near Park Street;
- Commuters moving along Darley Road; and
- Public Right of Way ("PRoW") users moving along several nearby PRoW, including to the east of London Luton Airport and users of the Chiltern Way long distance Footpath [ER 3.15.28].

363. Like the ExA, the Secretary of State has had regard to the Applicant's assessment of in-combination and cumulative effects with other consented and proposed developments at each of the receptors included in the Landscape and Visual Impact Assessment, and notes this identified no changes to the Landscape and Visual Impact Assessment conclusions on significant effects [ER 3.15.29].

Issues Considered

364. The Secretary of State notes the main issues in the Examination are those listed at ER 3.15.42, and these are considered further below.

Methodology

365. The Secretary of State has had regard to the concerns raised by the Hertfordshire Host Authorities who considered that further information was required to explain how the sensitivity for landscape and visual receptors had been determined, and that the assessment on perceptual qualities and key characteristics of landscape character areas lacked detail [ER 3.15.43]. In response to the ExA's questions [ER 3.15.44], the Applicant stated that using a category of 'very high' to judge magnitude of change would not change the assessment findings and that professional judgement was used to determine significance of effect based on several factors contributing to sensitivity and magnitude. Noting that the Joint Host Authorities agreed with this, the ExA considered that the Applicant's response satisfied its queries on how judgements for sensitivity of receptor had been arrived at [ER 3.15.45]. The Secretary of State notes that at the close of Examination, the Hertfordshire Host Authorities agreed with the Landscape and Visual Impact Assessment methodology (with the exception of the assessment of relative tranquillity within the Chilterns National Landscape which is considered in the Chilterns National Landscape section of this letter) [ER 3.15.46]. The Secretary of State agrees with the ExA that, overall, the Landscape and Visual Impact Assessment methodology followed guidance within the Guidelines for Landscape and Visual Impact Assessment Third Edition (2013) and is sufficient to identify Likely Significant Effects on landscape and visual impact matters [ER 3.15.51].

Viewpoints

366. The Secretary of State notes that Central Bedfordshire Council requested two additional viewpoints within Luton Hoo Registered RPG. This was opposed by the Applicant who considered there to be sufficient viewpoints taken from the grounds of Luton Hoo RPG and that further viewpoints would be disproportionate [ER 3.15.55]. Following site inspections, the ExA concluded that the Landscape and Visual Impact Assessment viewpoints were sufficient to understand the visual impact of the Proposed Development and did not consider that additional viewpoints were necessary [ER 3.15.57]. The Secretary of State has no reason to disagree with this conclusion.

367. The Secretary of State is aware that Hertfordshire Host Authorities considered that the Accurate Visual Representations ("AVR") based on winter views should be updated to illustrate proposed vegetation in a predominantly defoliated state [ER 3.15.53]. Like the ExA, the Secretary of State considers that incorporating a combination of winter tree planting and summer hedgerow planting on the AVRs was not particularly helpful but is satisfied that the AVRs provide a reasonable understanding of the visual impact of the Proposed Development and how this would be experienced with the proposed embedded and additional mitigation measures [ER 3.15.58].

368. At the close of Examination, the Secretary of State notes there were no further outstanding matters in respect of the content of the information illustrated on the viewpoints. The ExA was satisfied that the AVRs generally followed the guidance contained in the Guidelines for Landscape and Visual Impact Assessment Third Edition (2013) and Landscape Institute Technical Guidance Note TGN 06/19 - Visual

representations of development proposals, September 2019 [ER 3.15.58]. The Secretary of State concurs.

Environmental Statement Assessment Findings

369. The Secretary of State notes that the Joint Host Authorities confirmed that they were generally in agreement with the findings of significant effects for the landscape and visual receptors assessed in the Environmental Statement. Based on observations during site inspections and its review of the assessment findings, the ExA saw no reason to disagree with the assessment findings on significant effects [ER 3.15.59]. The Secretary of State is also content.

Earthworks (Work No. 1a) and Earth Bund (Work No. 5c(02))

370. The Secretary of State notes the consideration given by the ExA to the proposed earthworks and earth bund which would be part of the landscape restoration works forming the eastern edge of the apron platform for the Proposed Development [ER 3.15.60]. In particular, the Secretary of State notes that the Hertfordshire Host Authorities did not agree with the Applicant that the earth bund would minimise impacts on the landscape and considered the description of the existing Airport infrastructure in the Landscape Character Assessment as 'truncating' the Landscape Character Areas, which they stated was not a positive character that should be amplified [ER 3.15.64].

371. Like the ExA, the Secretary of State considers that the earthworks and particularly the proposed earth bund, would adversely affect the physical character of the landscape and lead to further erosion of Luton Borough Council's Landscape Character Area 13 and Hertfordshire Landscape Character Area 200 and that these works would and give rise to the significant effects identified in AS-086 [ER 3.15.65]. While the Secretary of State appreciates the need for a level aviation platform, she agrees with the ExA that the extensive scale and form of the earthworks would be at odds with the existing landform of the Landscape Character Areas, in that it would appear as a prominent and intrusive feature in short range views to users of Wigmore Valley Park and Footpath KW043 which were both judged to have medium to high sensitivity. The Secretary of State also shares the ExA's concerns regarding the uncertainty of the potential need for retaining walls in the event that an earthworks solution could not be implemented, which could exacerbate both landscape and visual effects [ER 3.15.66].

372. The Secretary of State agrees with the ExA that as Luton Borough Landscape Character Area 13 is an Area of Local Landscape Value, the proposed scale of the earth bund would not protect or enhance a valued landscape as required by paragraph 180 of the NPPF, nor would it conserve or enhance the character and setting of Luton Borough Landscape Character Area 13 or Hertfordshire Landscape Character Area 200 in contravention of LLP Policy LLP29. The ExA further considered that adverse visual impacts would occur to the receptors of Wigmore Valley Park and Footpath Kings Walden (KW)O43 and concluded that that these works would attract moderate negative weight against the making of the Order [ER 3.15.67]. The Secretary of State agrees.

Visual Impact of Elevated Built Development

373. The Secretary of State has considered Hertfordshire Host Authorities' concerns relating to the impact of the proposed elevated built development and the possible

adverse visual effects this would cause in rural areas to the east of London Luton Airport [ER 3.15.68]. The Secretary of State has also had regard to the concerns raised regarding Applicant's approach to mitigating visual effects, which the Hertfordshire Host Authorities considered primarily focused on soft planting proposals [ER 3.15.69]. At the close of examination the Hertfordshire Host Authorities maintained their concerns and considered that more explanation was needed on how the design intent had responded to the site context and surroundings and other mitigation that had been considered as opposed to implementing soft landscaping to mitigate visual impacts ER 3.15.72].

374. The Applicant maintained that landscape and visual impacts had been considered during design evolution and that the landscape mitigation measures would result in non-significant effects on visual receptors in the majority of instances on visual receptors to the east of London Luton Airport [ER 3.15.73]. The ExA concluded that the visual impact of built development situated on the airfield platform (most notably Proposed T2 (Work No. 3b), Hotel (Work No. 4a), Car Park P12 (Work No. 4r), Hangars A and B (Work No. 4b) and surface movement radar (Work No. 2a(02)), would be prominent in both short and longer range views. Accordingly, the ExA considered that the proposed built form of the Proposed Development would appear prominent and give rise to adverse visual effects on visual receptors in rural areas to the east of London Luton Airport. The Secretary of State concurs. The Secretary of State also agrees with the ExA that, although the proposed mitigation planting would help to reduce the visual impacts of these structures in certain locations over time, it would not fully mitigate the predicted effects due to the proposed height and massing of the proposed works [ER 3.15.74]. In considering this issue, the Secretary of State has been mindful that the proposed parameters of the built development have been driven by the need to ensure required space requirements are met [ER 3.15.75].

375. Having conducted its own observations from site inspections, the ExA concluded that London Luton Airport was already a noticeable feature in views from surrounding rural areas and that the Proposed Development would significantly exacerbate this. However, the ExA considered that this was an unavoidable consequence of any airport expansion and must be weighed against the benefits of the Proposed Development in accordance with paragraph 5.225 of the ANPS [ER 3.15.75]. The Secretary of State agrees with the ExA that the visual prominence of the built development would attract an overall negative weight against the Order [ER 3.15.76] which would not be fully mitigated. The Secretary of State considers the success of mitigation measures in reducing these effects in accordance with local planning policy requirements in the mitigation section below. Overall, the ExA considered that the visual impacts of the Proposed Development would conflict with the various national and local policies summarised at ER 3.15.156 and taken as a whole, concluded that the visual effects would attract moderate negative weight against the Order being made. The Secretary of State agrees. A summary of the visual effects is also provided below.

Water Treatment Plant (Work no. 4d) and Fuel Storage Facility (Work no. 4c(01))

376. The Secretary of State has had regard to the Applicant's comments in response to the concerns raised by the Hertfordshire Host Authorities regarding the Water Treatment Plant and Fuel Storage Facility as summarised at ER 3.15.77- ER 3.15.79. The Secretary of State agrees with the ExA that the proposed works would constitute prominent features within the Main Application Site and in short range views for

receptors using PRowS within North Hertfordshire. While the Secretary of State acknowledges the Applicant's efforts to reduce visual effects through proposed landscaping and siting the works at the lowest land levels, she agrees with the ExA that this would not fully screen the works, particularly the Fuel Storage Facility, due to its height. Based on its observations during site inspections, the ExA considered that longer range views would largely be limited due to local topography and existing tree planting [ER 3.15.80]. The Secretary of State has no reason to disagree with this conclusion.

377. Like the ExA, the Secretary of State accepts that the works are a necessary requirement in the proposed locations and that sufficient consideration has been given to the proposed siting and mitigation in the form of planting to reduce visual effects, with the exact details subject to final design secured through requirement 9 of the recommended draft Order [ER 3.15.81]. The ExA concluded that, while the works have sought to avoid or minimise harm to the landscape, providing reasonable mitigation where possible in accordance with paragraph 5.218 of the ANPS, they would not be sympathetic to local character or landscape setting as required by paragraph 135c of the NPPF [ER 3.15.82]. The Secretary of State concurs.

378. The Secretary of State also agrees with the ExA that these works would result in some tension with the requirements of LLP Policy LLP25(i) given that they would not enhance the distinctiveness and character of the area and that due to their proximity with North Hertfordshire, the North Hertfordshire Local Plan would be a relevant consideration. Although the works would not necessarily comply with North Hertfordshire Local Plan ("NHLP") Policy SP12 in relation to respecting the existing landscape character, like the ExA, the Secretary of State is satisfied that there would not be unacceptable harm to the character and appearance of the surrounding area or the landscape character area in which the works would be located (NHLP Policy NE2(b)) [ER 3.15.82].

379. Overall, the Secretary of State agrees with the ExA that the works would remain prominent features and would be visible, and this would result in some tension with the relevant local and national policy. However, given that measures have been incorporated to minimise harm to the landscape which would reduce visual effects over time, that these works would attract a little negative weight against making the Order [ER 3.15.80 and 3.15.83].

Fire Training Ground (Work No. 2d)

380. The Secretary of State notes that Central Bedfordshire Council considered that the Fire Training Ground would be an intrusive and incongruous feature in the landscape and that the proposed mitigation in the form of hedgerow planting [ER 3.15.86] would not minimise the adverse visual effects [ER 3.15.88]. Noting the observations made by the ExA during site inspections as summarised at ER 3.15.90, the Secretary of State agree that the Fire Training Ground would appear as a prominent and incongruous addition to the landscape and in views towards the airport and would bring the airport's built development closer to the south. Further, while the Secretary of State notes that the proposed hedgerow planting would be planted prior to the construction of the Fire Training Ground, due to its maximum of height of 15.4m, she agrees with the ExA that hedgerow planting would not fully mitigate views to the extent considered by the Applicant. In her consideration, the Secretary of State has had regard to the fact that the hedgerows would be maintained at a maximum height

of 2.1m when reaching maturity but that screening would not be possible in views from Someries Castle and Luton Hoo RPG [ER 3.15.91].

381. The Secretary of State notes the consideration given by the ExA to how the location for the Fire Training Ground had been chosen [ER 3.15.85]. Like the ExA, the Secretary of State is satisfied that while the Applicant considered alternative locations, the identified need to locate the new terminal to the east of the present terminal and the operational constraints limited options for the Fire Training Ground relocation [ER 3.15.92].

382. The Secretary of State notes and agrees with the ExA's conclusions regarding the Fire Training Ground's lack of compliance with national and local policies as set out at ER 3.15.93. The ExA concluded that, even accounting for the proposed hedgerow planting, due to the adverse landscape and visual effects on sensitive receptors, the Fire Training Ground would attract great negative weight against the making of the Order [ER 3.15.94]. The Secretary of State agrees.

Car Park P1 (Work No. 4g)

383. The Secretary of State has had regard to the concerns raised by Central Bedfordshire Council as to the visible impact of the proposed Car Park P1 and the intrusive effect of lighting on Luton Hoo RPG [ER 3.15.95]. The Secretary of State has noted the Applicant's response as summarised at ER 3.15.96 which concluded that the effects of light spill would be negligible. She has also had regard to the fact that Central Bedfordshire Council maintained its significant concerns of the visibility from vantage points within Luton Hoo RPG which could be exacerbated by the provision of solar panels, lighting and materials where no mitigation was proposed to offset this harm [ER 3.15.97]. Having undertaken site inspections, the ExA observed the location of the proposed car park from various vantage points within Luton Hoo and considered that views of the built form of Luton and London Luton Airport from Luton Hoo drive and the house were limited, although possibly [visible] from more elevated locations [ER 3.15.100]. While the ExA noted that the top of the car park would be visible above the existing trees, it was satisfied that existing vegetation would reduce the visual dominance of the car park, although concluded that it would not fully mitigate it. The ExA further noted that the Design Principles would allow for the impacts on Luton Hoo to be factored into the final design [ER 3.15.101]. The Secretary of State has no reason to disagree.

384. Given that the car park would intrude on the park setting at Luton Hoo RPG from certain locations, but that the visual impact would be limited, the ExA concluded that the visual impact of Car Park P1 attracted a little negative weight against the making of the Order [ER 3.15.102]. The Secretary of State agrees with this conclusion.

Light Pollution

385. The Secretary of State notes that Hertfordshire Host Authorities considered that a night-time assessment compliant with the Guidelines for Landscape and Visual Impact Assessment 3 methodology should have been provided [ER 3.15.106] on the basis that such an assessment would likely result in different levels of receptor sensitivity from those identified in the Light Obtrusion Assessment which attributed 'medium' sensitivity to residential receptors as opposed to the 'high' sensitivity that LVIA night-time methodologies would usually assign [ER 3.15.108]. The Secretary of State agrees with the ExA that the Landscape and Visual Impact Assessment has accepted the Light Obtrusion Assessment findings without any further consideration

and that a night-time assessment based on the same methodology as the Landscape and Visual Impact Assessment would have provided a more consistent assessment of effects from a Landscape and Visual Impact Assessment aspect [ER 3.15.113]. However, taking into account the comments made by the Hertfordshire Host Authorities who considered that the magnitude of change would be unlikely to be higher than low with the level of effect being dependent on the detailed design of the proposed built environment and the mitigation measures proposed [ER 3.15.108 and ER 3.15.114], like the ExA, the Secretary of State is satisfied that if there were any differences in the assessment findings, they would be minimal [ER 3.15.114].

386. The Secretary of State notes the concerns raised by Interested Parties regarding light pollution from onsite car parks [ER 3.15.103]. In response, the ExA recommended changes to the draft Order to introduce a lighting plan covering both construction and operational lighting. These changes were accepted by the Applicant and have been incorporated into requirement 6 and the CoCP secured under requirement 8 [ER 3.15.115]. The Secretary of State is satisfied with the proposed changes.

387. Although the Secretary of State notes the concerns raised by Central Bedfordshire Council regarding the lighting effects from the Fire Training Ground (Work No. 2d) and Car Park P1 (4g) [ER 3.15.106], like the ExA, she is satisfied that the information provided by the Applicant in its response to the ExA's Rule 17 Request dated 25 January 2024 addresses these concerns and that the limited duration where lighting would be required would give rise to little impact [ER 3.15.116]. Further, the Secretary of State is satisfied with the measures the Applicant proposed to introduce into the Design Principles to avoid a direct view of light sources from the car park [ER 3.15.116]. The Secretary of State agrees with the ExA that securing the detailed design of operational lighting would allow for greater consideration of lighting at the detailed design stage. Although the Secretary of State acknowledges that the Proposed Development would likely give rise to more light pollution than at present, like the ExA, she considers that the measures that have been introduced to the draft Order would secure a mechanism to limit the impact of light pollution on local amenity, in accordance with paragraph 191 of the NPPF [ER 3.15.117].

388. The Secretary of State notes that the ExA stated it was not aware of nor could see any conflict with policies in either the Luton Local Plan or North Hertfordshire Local Plan with regard to lighting, with the exception of North Hertfordshire Local Plan Policy NE3 criterion (b) which is considered further in the Chilterns National Landscape section. The Secretary of State finds no reason to disagree. Like the ExA, the Secretary of State is also satisfied that the mitigation measures set out in set out in the Light Obtrusion Assessment would avoid the impacts of lighting that shines directly into neighbouring buildings and the sky in accordance with paragraphs 111-113 of the North Hertfordshire District Council Design Supplementary Planning document [ER 3.15.118].

389. Overall, given that the Proposed Development would give rise to increased lighting to the surrounding rural areas even with mitigation, the ExA considered that this issue would attract a little negative weight against the making of the Order [ER 3.15.119]. The Secretary of State concurs.

Appropriateness of Embedded and Additional Landscape Mitigation Measures

390. The Secretary of State notes that throughout the Examination the Joint Host Authorities largely agreed with the mitigation measures proposed for the replacement open space [ER 3.15.120] and that the Strategic Landscape Masterplan would result in a positive impact on the local environment [ER 3.15.123]. Noting that the Strategic Landscape Masterplan contained a number of positive landscape mitigation measures, including the enhancements to Wigmore Valley Park, replacement open space and additional mitigation planting, like the ExA, the Secretary of State is satisfied that the measures contained within the Strategic Landscape Masterplan have sought to avoid or minimise harm to the landscape, providing reasonable mitigation where possible and appropriate in accordance with paragraph 5.218 of the ANPS [ER 3.15.124]. The Secretary agrees and like the ExA, in reaching her conclusion, has noted that the landscape elements in the replacement open space would take a significant length of time to mature and construction works would persist for a period of years which should be factored into the overall weighting. Further she has been mindful that the replacement open space is also a requirement under section 132 of the 2008 Act [ER 3.15.125].

391. The Secretary of State agrees with the ExA that the Applicant's approach to landscaping mitigation has sought to mitigate effects in accordance with paragraph 5.218 of the ANPS and incorporated mitigation in accordance with paragraph 135 of the NPPF, LLP Policy LLP6F(i), CBLP Policy EE5 and NHLP Policy NE2. The ExA concluded that, when balancing the positive benefits of the landscape mitigation measures against the policy requirements for the works, and taking into account the significant time period for the landscape mitigation to fully mature, landscape mitigation would attract a little positive weight in favour of making of the order [ER 3.15.126]. The Secretary of State agrees.

Appropriateness of Hedgerows

392. The Secretary of State has considered the proposed planting of off-site hedgerows as part of the proposed additional mitigation measures [ER 3.15.127] and notes the view of the Applicant who maintained that the proposed hedgerow planting would strengthen landscape character and structure and mitigate potentially significant effects on people's visual amenity [ER 3.15.135]. At the close of Examination, the Hertfordshire Host Authorities maintained the view that wider hedgerow planting and restoration would block views and did not consider that such mitigation was fully justified or demonstrated in relation to mitigating the visual intrusion of large buildings into the wider countryside [ER 3.15.137], and Central Bedfordshire Council remained concerned regarding the off-site landscaping mitigation proposed along the northern edge of Hyde Footpath 4, Hyde Footpath 5 and Hyde Bridleway 3 and considered that the off-site landscape mitigation would not be appropriate in certain areas [ER 3.15.136].

393. Like the ExA, the Secretary of State agrees that the proposed hedgerow planting would help to strengthen landscape character and screen elements of the Proposed Development in certain short-range views [ER 3.15.139] but is not persuaded that the hedgerow restoration is necessary in all proposed areas to screen longer range views. In her considerations, the Secretary of State has had regard to the observations made by the ExA during site inspections and its consideration of the Applicant's responses [ER 3.15.140].

394. The Secretary of State agrees with the ExA that the proposed hedgerow planting would result in some beneficial mitigation. However, this would not be

beneficial in all areas. While the Applicant confirmed that a high proportion of field boundaries had been removed in these landscape character areas, the ExA considered that, in the absence of further information, it could not be demonstrated that the proposed hedgerows would contribute towards the guidelines for managing change in Hertfordshire's Landscape Character Areas 201 and 202. Accordingly, the ExA concluded that this mitigation weighed neither for nor against the making of the Order [ER 3.15.141]. The Secretary of State agrees.

Trees

395. The Secretary of State notes that as part of the Proposed Development, out of a total of 865 trees and 445 tree groups, a total of 353 trees and 21 tree groups and two hedges were identified for removal [ER 3.15.142]. The Secretary of State agrees with the ExA that the extent of tree removal would have an adverse effect on the landscape character of the areas that would experience tree removal, and this would diminish visual amenity. However, paragraph 136 of the NPPF seeks to ensure that opportunities are taken to incorporate trees elsewhere in developments, that long term maintenance measures are in place and to retain trees wherever possible [ER 3.15.143].

396. Like the ExA, the Secretary of State is satisfied, that tree loss has been restricted to those areas where development is proposed, and that both the embedded and additional landscape mitigation would include proposal for several new areas of woodland, individual tree planting and hedgerow restoration which would result in sufficient mitigation, despite the significant length of time it would take for the landscaping to reach maturity [ER 3.15.144]. Noting that no submissions against tree removal were received from the Joint Host Authorities and given the extent of the proposed landscape mitigation secured in the draft Order, the Secretary of State agrees with the ExA that from a landscape and visual perspective, this matter does not weigh for nor against the making of the Order [ER 3.15.145]. This assessment does not include the removal of veteran tree T343 which is separately considered and weighted in the biodiversity section.

The Secretary of State's Conclusions on Landscape and Visual

Summary of landscape effects

397. The Secretary of State notes that there would be direct moderate and major adverse effects to the landscape character areas of Wigmore Rural and Peters Green Plateau during the construction and operation of the Proposed Development which would result in the permanent deterioration of their character, and that parts of Kimpton and Whiteway Bottom landscape character areas would also experience moderate adverse effects during Phases 2a and 2b due to the construction of the water treatment plant, fuel storage facility and infiltration plants reducing to minor adverse during operation after mitigation measures establish. The Secretary of State agrees with the ExA that the effects to the landscape character areas of Peters Green Plateau and Kimpton and Whiteway Bottom would attract moderate negative weight against the order being made [ER 3.15.147].

398. The Secretary of State is aware that Wigmore Rural landscape character area is also covered by a local landscape designation and agrees with the ExA that this would be adversely affected, even with the proposed enhancements to Wigmore Valley Park. Further, the Secretary of State agrees that Someries Farm Area of Local

Landscape Value would be adversely affected by the Fire Training Ground. Like the ExA, the Secretary of State considers that these impacts would not protect and enhance these valued landscapes, contrary to paragraph 180 of the NPPF. Further, she agrees that with regard to LLP Policy LLP29, Areas of Local Landscape Value would not be protected or conserved with only a small part of Wigmore Rural Area of Local Landscape Value potentially enhanced by Work No. 5b(01). The ExA concluded that the significant impacts on these designations would attract great negative weight against the order being made [ER 3.15.148]. The Secretary of State agrees.

399. The Secretary of State notes that Stockwood Park, an Area of Great Landscape Value would be impacted by increased aircraft movements during the construction phases of the Proposed Development. The ExA considered the relative tranquillity experienced in this Area of Great Landscape Value would not be preserved or enhanced. Taking into account that no Interested Parties disagreed with the minor adverse impact predicted, the Secretary of State agrees with the ExA that this attracts a little weight against the Order being made [ER 3.15.149].

400. The Secretary of State is aware that the landscape receptor of the parkland of Wigmore Valley Park would experience major adverse significant effects during Phase 1 and moderate adverse significant effects during Phases 2a and 2b of the Proposed Development and she agrees with the ExA that this would weigh against the Order being made in the short and medium term. The ExA concluded that due to the significant length of time before beneficial effects would be experienced, when balancing the overall negative and positive effects on this landscape receptor the impact would attract a little negative weight against the order being made [ER 3.15.150]. The Secretary of State concurs.

401. Overall, given that harm would be experienced to valued landscapes and local landscape designations which would not be preserved or enhanced, the Secretary of State agrees that the landscape effects would attract great negative weight against the Order being made [ER 3.15.152]. The Secretary of State has considered the moderate adverse significant effects on the aesthetic or perceptual characteristics of the landscape within the Chilterns AONB and has weighed them separately in the Chilterns National Landscape section of this letter [ER 3.15.151].

Summary of Visual Effects

402. The Secretary of State notes that significant visual effects would be experienced from a number of receptors, with the most significant effects experienced during the construction phase and would remain for a lengthy period until the embedded landscape and additional landscape mitigation fully matured [ER 3.15.153].

403. The Secretary of State notes and agrees with the weight attributed by the ExA to the various aspects of the built development set out at ER 3.15.155. Overall, the ExA considered that the visual impacts of the Proposed Development would conflict with the various national and local policies summarised at ER 3.15.156 and taken as a whole, concluded that the visual effects would attract moderate negative weight against the Order being made. The Secretary of State concurs. In accordance with paragraph 5.225 of the ANPS the Secretary of State has weighed the visual effects against the benefits of the Proposed Development and as set out in the Planning Balance section, concluded that the need and the benefits that the Proposed Development would deliver would outweigh the visual effects Mitigation

404. The Secretary of State agrees with the ExA that the proposed embedded and additional landscaping mitigation measures would, on the whole, result in beneficial effects over time and that these measures (including those stated at ER 3.15.157) would attract a little positive weight in favour of the Order [ER 3.15.157].

405. Like the ExA, the Secretary of State agrees that, when fully mature, the replacement open space could be positive. However, as there would be a significant period of time before the beneficial effects would be fully experienced and as the Applicant is obliged to provide this replacement open space under section 132 of the 2008 Act, that this mitigation weighs neither for nor against the making of the Order [ER 3.15.158].

406. The ExA concluded that the planting of hedgerows would give rise to both positive and negative effects (as considered in the Hedgerow section above) and was not persuaded that the planting of hedgerows as a mitigation measure to reduce the visual effects of built development was an entirely positive approach. Accordingly, the ExA considered this matter to neither weigh for nor against the making of the Order [ER 3.15.159]. The Secretary of State agrees.

407. Overall, the Secretary of State recognises that the Applicant has sought to mitigate effects in accordance with paragraph 5.218 of the ANPS and the Proposed Development would provide appropriate strategic landscaping on-and off-site in accordance with LLP Policy LLP6F(i)). Like the ExA, the Secretary of State is satisfied that the landscaping would be sufficient to ensure that the Proposed Development would not cause unacceptable harm to the character and appearance of areas within North Hertfordshire (NHLP Policy NE2). The Secretary of State agrees with the ExA that the Strategic Landscape Masterplan would largely provide a positive set of measures to mitigate adverse landscape and visual effects and considers that this would attract a little positive weight in favour of making the Order. In reaching this conclusion, like the ExA, the Secretary of State has taken into account that the replacement open space is a necessary requirement and also the overall significant length of time before the beneficial effects of landscaping mitigation would be fully experienced. [ER 3.15.160].

The Secretary of State's Overall conclusion

408. The ExA concluded that adverse landscape effects would attract great negative weight and that visual effects would attract moderate negative weight against the making of the Order in the short to medium term. The ExA further considered that landscape mitigation would attract a little positive benefit once matured [ER 5.2.75]. Noting that the Proposed Development has been designed carefully with the aim of avoiding or minimising harm to the landscape and providing reasonable mitigation where possible and appropriate in accordance with policy, the Secretary of State is surprised by the great weight the ExA attributed to the adverse landscape effects. However, the Secretary of State is satisfied with the ExA's overall conclusion that, in the longer term, landscape and visual impacts would attract little negative weight against the making of the Order [ER 5.2.75]. Even with great negative weight attached to landscape and visual effects, the Secretary of State has taken account of the careful design of the Proposed Development, that it aligns with policy and that over the long term landscape and visual mitigation would take effect and she is therefore content that taking these matters into account in the overall planning balance, the positive effects of the Development would outweigh the negative impacts.

Land Use

409. The Applicant's assessment of land use is contained within Chapters 6, 13 and 14 of the ES [ER 3.16.3]. Like the ExA, the Secretary of State is satisfied that this assessment meets the requirements of the ANPS, national and local policies [ER 3.16.79] and has taken the effects on Best and Most Versatile ("BMV") land into account in the ES as required by local and national policies [ER 3.16.76]. The Secretary of State notes that the Luton Local Plan does not have specific policies for the protection of soils or agricultural land and that Hertfordshire Host Authorities considered the Proposed Development to comply with the North Hertfordshire Local Plan Policy NE2 which protects soil types in the context of landscape [ER 3.16.75].

Agricultural land and holdings

410. The Applicant's assessment confirms that approximately half of the 126.1ha of agricultural land within the Order Limits [ER 3.16.6] is classified as Best and Most Versatile ("BMV") Grade 3a land [ER 3.16.7] and that, in total, over 25ha of BMV would be permanently lost, mainly through conversion to woodland and scrub and 0.6ha temporarily removed, albeit over a prolonged period, due to the Proposed Development. The Applicant concluded that this would be a significant major adverse effect of the Proposed Development [ER 3.16.8]. Like the ExA, the Secretary of State has no reason to disagree with this conclusion and given the quantum of loss, agrees that this is a matter of moderate weight against the making of the Order [ER 3.16.79]. While the Secretary of State is aware that 29ha of BMV land would be converted to grassland, she notes that the Agricultural Land Classification system relies on the physical properties of the soil which would not significantly change under grassland, and could revert to agricultural use in the future, and accept the Applicant's conclusion that the effect of this would not be significant [ER 3.16.9].

411. The Secretary of State notes the consideration given by the ExA regarding whether BMV land was a factor taken into consideration by the Applicant when considering the options appraisal [ER 3.16.47], and the Applicant's confirmation that BMV was not initially a factor in the initial options appraisal [ER 3.16.48]. While the Secretary of State notes the ExA's view that it is not clear that alternatives to loss of BMV land, both overall and at a detailed scale were thoroughly accounted for by the Applicant [ER 3.16.77], she is mindful that the Proposed Development must necessarily be adjacent to the existing airport and agree with the ExA that there would not be sufficient alternative brownfield land available at this location or deliverable alternative layouts that would avoid significant loss of BMV. Further, taking into account that the surrounding agricultural areas have been demonstrated to be a mosaic of Subgrade 3a and 3b land, making preference for development on poorer quality land impractical, she agrees with the ExA that wherever the Proposed Development was placed, significant loss of BMV would be inevitable [ER 3.16.78].

Soils

412. The Secretary of State notes that approximately 101ha of soils would be stripped, with some of the higher quality soil retained for landscaping, and that additional suitable soil would need to be imported for soft landscaping with the Applicant concluding that this would result in an insignificant effect. The Secretary of State notes that the Applicant proposed that the retained soil would be managed in accordance with the Soil Management Plan [ER 3.16.14] which would ensure that,

where excavated soils are used on the Main Application site, the effects would be minimised and that this is secured in the draft Order [ER 3.16.80].

413. The Secretary of State also notes that approximately 146,500 cubic meters of topsoil and 119,200 cubic meters of subsoil would not be retained, and that the Applicant identified that removing such a large volume of soil with low resilience to structural damage would result in a significant major adverse effect overall, even taking into consideration that the remaining soils could benefit from a period of zero tillage grassland [ER 3.16.15]. The ExA was satisfied that this removal was largely unavoidable and concluded that this resulted in a major adverse effect, which it considered was a matter of moderate negative weight against making the Order [ER 3.16.80]. The Secretary of State agrees.

Green Belt

414. The Secretary of State is mindful that the Luton Local Plan, North Hertfordshire Local Plan and Central Bedfordshire Local Plan contain policies which seek to prevent inappropriate development in the Green Belt unless Very Special Circumstances exist, and this approach reflects the NPPF and in the ANPS [ER 3.16.81].

415. It is noted that the Applicant proposes that four elements of the Proposed Development would be located in the Green Belt. These works comprise an infiltration tank (Work No. 4v), a fuel pipeline with an Above Ground Installation (Work No. 4c (02)), junction improvements (Work No. 6e (b)) and surface movement radar (Work No. 2a (02)). [ER 3.16.16]. Although the Proposed Development would necessitate the change of use of agricultural land which falls within the Green Belt to Country Park with associated landscaping (Work No. 5b (02)), the Secretary of State acknowledges that the Applicant confirmed that there would be no physical works associated with this change and that this element was therefore not considered in the Green Belt assessment [ER 3.16.32].

416. The Secretary of State notes that the Applicant's Green Belt assessment concluded that the infiltration basin and junction works would not constitute inappropriate development in accordance with the NPPF [ER 3.16.33]. These works would, once installed, be underground, the Secretary of State agrees with the ExA that these works would not affect the openness of the Green Belt or conflict with the purposes of including this land in the Green Belt [ER 3.16.83].

417. The Applicant's assessment concluded that the surface movement radar and Above Ground Installation would constitute inappropriate development in the Green Belt [ER 3.16.33] and like the ExA, the Secretary of State agrees that these works would not fall within any of the forms of development listed in paragraph 155 of the NPPF and as such would be inappropriate development. The ExA was satisfied that the proposed location of the surface movement radar was necessary for airport safety and that the harm to the openness of the Green Belt caused by the Above Ground installation would be outweighed by the environmental benefits of removing a significant number of tanker movements from the local road network and accordingly, considered that the Very Special Circumstances required by the NPPS existed for these two elements [ER 3.16.84]. Noting that Luton Borough Council were content that the surface movement radar needed to be located in the Green Belt and that it would be essential for the operation of the airport and that Central Bedfordshire Council was satisfied with the Applicant's case regarding the work required in the Green Belt [ER 3.16.60], the Secretary of State agrees.

418. The Secretary of State notes that in accordance with paragraphs 5.170 and 5.178 of the NPSNN and paragraphs 5.114 and 5.127 of the ANPS that the Proposed Development should only be approved in 'very special circumstances' [ER 3.16.81].

419. The ExA noted that the change of use of agricultural land to Country Park was not assessed by the Applicant because it considered it unnecessary as there would be no physical works associated with this which would constitute development. Like the ExA, the Secretary of State disagrees with this approach as she considered the proposal would result in a material change in use of the land. However, she notes that the ExA was satisfied that such works would be not inappropriate development by virtue of NPPF paragraph (155(e)) subject to those works preserving the openness and not conflicting with the purposes of including land within the Green Belt [ER 3.16.85].

420. The Secretary of State notes that the Strategic Landscape Masterplan indicates there would be a mix of proposed landscaping for the proposed replacement open space and that there would be resurfacing, and in some instances upgrading of existing Public Rights of Way, and creation of new surfaced paths. Like the ExA, the Secretary of State is satisfied that, although these treatments would introduce built elements into an open area, in principle this should not affect the openness or the permanence of the Green Belt [ER 3.16.86].

421. The Secretary of State notes that the Applicant proposes to temporarily stockpile soil on land within the Green Belt, but did not consider this to be inappropriate development, despite the absence of an assessment of this matter in its Green Belt assessment [ER 3.16.87]. The Secretary of State agrees with the ExA who concluded that the two proposed stockpiles would affect the openness of the Green Belt and considered that this would constitute inappropriate development within the Green Belt. However, taking into account that the impact would be temporary and the retention and reuse of soil on site would minimise the need for the import or export of soil and the associated traffic movements, the ExA considered that the temporary nature of the works and the ability to retain and reuse soil on site would provide the Very Special Circumstances required to outweigh the harm caused to the Green Belt [ER 3.16.88].

422. At the end of the project, the Secretary of State notes that significant reprofiling works are proposed for the area where the two stockpiles are to be located and this would result in an increase in material for landscaping at these locations. Like the ExA, the Secretary of State is satisfied that such works would constitute an engineering operation and therefore subject to them not affecting openness or conflicting with the purposes of including land in the Green Belt would not be inappropriate development. The ExA was concerned that the increase in material could potentially adversely affect openness. However, the ExA was satisfied that, with the inclusion of requirement 9(2)(f) of the draft Order, a more detailed evaluation of the effect on the openness of the Green Belt would be required before this requirement could be discharged [ER 3.16.89]. The Secretary of State concurs.

423. The Secretary of State agrees with the ExA that the Proposed Development would either not be inappropriate development and would not affect the openness or purposes of including land within the Green Belt; or where the Proposed Development would constitute inappropriate development, that the proposed works would not affect the openness or purposes of including land within the Green Belt and/or Very Special Circumstances have been demonstrated for the proposed locations of the Surface Movement Radar, the Above Ground Installation works and stockpiles. The Secretary

of State considers that as there is a need for the Proposed Development this would outweigh the harm to the Green Belt that would result from these elements of the Proposed Development [ER 3.16.90]. The ExA concluded that the Proposed Development would comply with the requirements of local policies, the NPPF and the ANPF and that matters concerning the Green Belt neither weigh for nor against the making of the Order [ER 3.16.91]. The Secretary of State agrees.

Open Space

424. The Secretary of State notes that the Proposed Development would result in the loss of open space at Wigmore Valley Park, a designated district park [ER 3.16.38] and that replacement open space is proposed as compensation on land further to the east of Wigmore Valley Park and to the south of Darley Road which is currently in agricultural use [ER 3.16.40]. The new Wigmore Valley Park would be at least 47.5ha compared to the existing 41.6ha [ER 3.16.38] and the Applicant envisages that at least 11.2ha of the existing open space would remain as open space [ER 3.16.40].

425. The Secretary of State notes that the replacement open space would be provided before the existing open space is lost, with areas made available for public use before the end of 2025 [ER 3.16.41] and is content that Article 35 of the draft Order adequately secures the requirement for the production and approval of a timetable for the implementation of the replacement open space [ER 3.16.93]. Like the ExA, the Secretary of State is therefore satisfied there would be continuity of provision of open space and although this would be provided within North Hertfordshire and not Luton [ER 3.16.61], it would be within the immediate vicinity of the existing open space that would be lost [ER 13.3.92].

426. While the Secretary of State acknowledges that there is no dispute that the replacement land would be an improvement in terms of quantity [ER 3.19.92], she is aware that it would take a significant amount of time for landscaping to mature and construction to be completed and agrees with the ExA that during this significant period, users of the open space would have a poorer experience to that which they currently enjoy [ER 3.6.93]. However, after this period, taking into account the commitments made by the Applicant to the long-term management of the landscaping and facilities [ER 3.16.42], the Secretary of State concurs with the ExA that the replacement open space would provide a slightly enhanced experience to users compared to that which they currently enjoy [ER 3.16.94]. In reaching this conclusion, Secretary of State notes the factors taken into consideration by the ExA in ER 3.16.94, including the increased distance to the main area of the new park which were not found to be notably disadvantageous and that the main access from the car park would be enclosed which would not be an improvement on the existing largely uninterrupted aspect and agrees with the conclusion that on balance, the compensatory land would result in a broadly similar experience for users to that of the current park.

427. Concerns regarding the fact that the proposed replacement land was already open space were raised by Friends of Wigmore Park [ER 3.16.62] and the Secretary of State notes that at the close of the Examination, a significant degree of uncertainty remained regarding whether the proposed replacement land was already being informally used for recreation. While the Secretary of State notes the Applicant's position that these assertions were speculative and had no reasonable basis [ER 3.16.95], she notes that the ExA concluded that there was sufficient evidence to indicate that the public had been using the replacement open space on an informal basis for a substantial amount of time, but found that this use was generally confined

to the informal network of paths around and across the agricultural fields. The ExA considered that, even if the informal paths were removed from the quantum of replacement land, it was satisfied that the proposed compensatory land remains of overall greater quantity, and in time it will be of better quality and the proposals would offer significantly enhanced accessibility of the open space through the new network of better-quality footpaths than the existing open space [ER 3.16.96]. The Secretary of State has no reason to disagree.

428. In conclusion, the Secretary of State agrees with the ExA that the Proposed Development would not result in the loss of open space as replacement space of a similar amount would be provided and that the Proposed Development would therefore meet the requirements of local policies, the NPPF (paragraph 103) and the ANPS (paragraph 5.124). Further, she concurs with the ExA that, in the short to medium term, as the experience for users of the replacement open space would be less than they currently experience, this would attract moderate to little negative weight against the making of the Order. However, in the long-term after construction ends after the landscaping matures and construction has ceased it would attract a little positive weight for the making of the Order due to the enhanced accessibility and improved management. Like the ExA, the Secretary of State is satisfied that by ensuring continuity of provision and enhancements to accessibility and improved management there would be no differential or disproportionate effects to users with protected characteristics in accordance with the Equality Act 2010 [ER 3.16.97].

Public Rights of Way

429. The Secretary of State notes that the Applicant proposes the stopping up of existing footpaths 29 and 38 and Bridleways 28 and 27 and the provision of new and improved routes within the planned replacement open space and Wigmore Valley Park as part of the Proposed Development [ER 3.16.44]. The noise and visual impacts on users of Public Rights of Way resulting from the Proposed Development are considered further in the corresponding sections of this letter. The ExA concluded that it was satisfied that the works required for the stopping up of the Public Rights of Way would be necessary to enable the construction and operation of the Proposed Development. The Secretary of State agrees. In reaching this conclusion, the ExA considered that in the short term this may differentially affect a number of groups with protected characteristics such as the young, the elderly and those with disabilities as they are more dependent on accessible pedestrian modes of transport. However, the ExA considered that the provision of new and improved routes within the planned replacement open space and retained elements of Wigmore Valley Park would, in the medium to long-term, enhance accessibility and encourage use. Accordingly, the ExA concluded that the Proposed Development would comply with the LLP (policy LLP29), NHLP (policy SP9), the NPPF (paragraph 104) and ANPS (paragraph 5.119) which seek to protect and enhance Public Rights of Way, and that the ExA and Secretary of State would have fulfilled their duty under the EA2010. The Secretary of State agrees with this conclusion and with the recommendation that this matter should carry moderate positive weight for the making of the Order [ER 3.16.98 and ER 3.16.100 final bullet point].

430. The Secretary of State notes the concerns raised by Interested Parties and Central Bedfordshire Council who considered that insufficient information had been provided to enable a proper assessment of the impact of the off-site landscaping mitigation on the function of the Public Rights of Way network and that the proposed

work may be inappropriate in these locations which may harm the character of the area. Central Bedfordshire Council further maintained that there were no requirements to secure the provision of this information and that this and potential mitigation for Footpath Hyde FP4 should be included in the Order [ER 3.16.69] and these concerns remained outstanding at the close of the Examination [ER 3.16.73]. The Secretary of State notes that no further consideration was given to this point by the ExA. Noting that neither Bedfordshire Council nor Luton Borough Council had any concerns regarding the effect of the Proposed Development on Public Rights of Way [ER 3.16.71], and that Central Bedfordshire Council was satisfied that the detail could be secured through requirement 9. The Secretary of State has considered the information before her, and on that basis, she is content that no further action on this point is required.

The Secretary of State's Overall Conclusion on Land Use

431. The Secretary of State notes that due to the multiple elements examined within this section and the different conclusions that have been reached, the ExA considered that it was challenging to provide an overall conclusion on land use for the purpose of the planning balance [ER 3.16.100]. However, in summary concluded that:

- the loss of Best and Most Versatile land and the removal of a substantial volume of soil would both attract moderate negative weight;
- some works in the Green Belt would not be inappropriate development, and would not affect the openness and purposes of including land in the Green Belt and therefore would neither weigh for nor against the Proposed Development;
- where works would be inappropriate development, if the Secretary of State concludes that there is an overall need for the Proposed Development then the ExA was satisfied that very special circumstances exist that would outweigh the harm to the Green Belt that would result and would neither weigh for nor against the Proposed Development; However, if the Secretary of State considers that there is not the need for the Proposed Development then the Surface Movement Radar, Above Ground Installation works, stockpiles and reprofiling would harm the openness of the Green Belt and would be a very great negative weight;
- in the short to medium term the experience for users of the replacement open space would be poorer than they currently experience and would attract little to moderate negative weight;
- in the long-term the ExA is satisfied that the replacement open space through enhanced accessibility would attract a little positive weight; and
- The improvements to the existing PRoW, provision of new PRoW and enhanced accessibility and encourage use would attract moderate positive weight.

432. With regard to works that would constitute inappropriate development, as the Secretary of State considers that there is an overall need for the Proposed Development, she agrees that very special circumstances exist that would outweigh the harm to the Green Belt that would result and that this would neither weigh for nor against the Proposed Development. Further, the Secretary of State agrees with the ExA's other conclusions on this matter.

Noise and Vibration

The Application

433. In its noise and vibration assessment as primarily contained within the ES Chapter 16 and in the additional noise assessment 'Accounting for COVID-19 in transport modelling - environmental appraisal' [ER 3.18.25], the Applicant concluded that no likely significant effects were expected to arise during construction of the Proposed Development. However, without mitigation, significant operational noise effects would occur in all phases, although the Phase 1 effects for surface access were assessed as temporary [ER 3.18.35].

Construction noise and vibration

434. In response to the significant number of representations from Interested Parties which identified concerns regarding construction and construction vehicle impacts, including noise and vibration [ER 3.18.68], the Secretary of State notes that the ExA explored the Applicant's approach to construction noise and vibration assessments, including the robustness of baseline noise monitoring, implications of possible 24 hour working for the conclusions of the assessment, controls on certain types of noisy construction activity (piling and conveyors), construction traffic noise modelling assumptions and validation, and controls on construction traffic routeing [ER 3.18.69]. The Applicant subsequently updated its baseline noise assessments and noise mitigation measures in the CoCP to include additional piling provisions and demarcation of night-time working exclusion areas [ER 3.18.70],

435. Like the ExA, the Secretary of State is satisfied that the controls in the oCTMP and CoCP, together with the inclusion of requirement 2(5) in the recommended Order which would prevent the commencement of the Proposed Development until a written scheme setting out the phases of construction for the authorised project has been submitted to and approved by Luton Borough Council in consultation with the specified authorities, Buckinghamshire Council and the relevant highway authority, would ensure that any construction controls approved under the CoCP would not give rise to any materially new or materially different environmental effects and are sufficient to secure the assessment outcomes [ER 3.18.72]. In reaching this conclusion, the Secretary of State has noted that the measures in the oCTMP and CoCP, were agreed by the Joint Host Authorities [ER 3.18.71].

436. The ExA concluded that although with mitigation in place, noise and vibration effects from construction were not predicted to cause significant adverse effects. Construction activities would occur over a prolonged duration and give rise to increased noise and vibration levels for residents, and these effects would not contribute towards improving local environmental conditions in accordance with paragraph 180e of the NPPF and on this basis the ExA attributed a little negative weight to these effects [ER 3.18.73]. The Secretary of State agrees.

Surface access noise and vibration – construction and operation

Surface access – baseline noise monitoring, modelling assumptions and validation

437. Various Interested Parties raised concerns regarding the potential for increased construction and/or operational traffic noise and with the Applicant's approach to baseline noise monitoring and surface access noise model validation [ER 3.18.74]. In response to questions raised by the ExA regarding these matters, the Applicant provided an additional explanation of the methodology, and additional surface access

noise modelling information. The Applicant also provided further justification for its approach to calibration and additional analysis, which confirmed that the reason for the variance between modelled and monitored construction traffic noise results in four locations was due to errors in measurement positions in the model arising from factors which were specific to the measurement locations [ER 3.18.81].

438. Taking into account that Suono (the Joint Host Authorities' acoustic consultant), Central Bedfordshire Council and the Hertfordshire Host Authorities were generally satisfied with the surface access noise model, methodology and assessment [ER 3.18.81], the ExA considered that when the additional surface access noise modelling information is taken into consideration, the construction and operational traffic noise model shows reasonable agreement with monitored data and can be relied on. Accordingly, the ExA concluded that the baseline noise monitoring and surface access assessment is sufficiently robust for the purposes of decision making [ER 3.18.83 and ER 3.18.98]. The Secretary of State has no reason to disagree.

Surface access - construction traffic routeing

439. The Secretary of State notes the assumptions contained in the oCTMP regarding construction traffic routeing which assumed the majority of construction traffic would access the Main Application Site via the M1, A1081 and President Way or the proposed Airport Access Road, but that some traffic would use the A602/ A505 corridor [ER 3.18.84].

440. Noting that at the close of the Examination, Buckinghamshire Council were content that the potential for adverse noise effects from construction traffic on the Buckinghamshire road network could be resolved through their involvement in the oCTMP and Traffic Management Working Group as secured by requirement 12, and that no matters remained outstanding for the Joint Host Authorities when the final mitigation measures were taken into account [ER 3.18.86], the Secretary of State concurs with the ExA that the traffic measures approved by the Joint Host Authorities and Bedfordshire Council are sufficient to secure the traffic noise outcomes assessed in the Environmental Statement [ER 3.18.87].

441. At the close of the Examination, the Secretary of State notes that Central Bedfordshire Council and the Hertfordshire Host Authorities had outstanding concerns regarding the transport modelling used by the Applicant [ER 3.18.77]. The Secretary of State's conclusion in relation to the transport assessment and modelling is dealt with in the Traffic and Transport section of this letter where she agreed with the ExA that the transport modelling was undertaken in accordance with relevant policy and guidance. As the surface access noise model is informed by the strategic traffic model, the Secretary of State therefore agrees with the ExA that the surface access noise modelling can be relied on [ER 3.18.88].

Surface access - COVID-19 traffic modelling and environmental appraisal

442. The Applicant's COVID-19 traffic modelling environmental appraisal identified exposure above the significant observed adverse effect level ('SOAEL') in Phase 1 due to temporary road noise effects at 17 properties adjacent to Eaton Green Road, between Vauxhall Way and Frank Lester Way. The Secretary of State notes that the Applicant proposed no mitigation for these effects, on the basis that these properties were predicted to already be very close to SOAEL, the magnitude of change was small, and the effect would be temporary until Luton Borough Council delivered certain off-site highway improvements for Vauxhall Way [ER 3.18.89 and ER 3.18.100]. The

Applicant informed the Secretary of State in its letter dated 19 August 2024 that works to the Vauxhall Way Improvements are expected to be delivered in 2028, and that noise assessments will be undertaken for that project. This date was also confirmed in the letter from Luton Borough Council dated 19 August 2024.

443. The ExA concluded that while the magnitude of change is predicted to be small and the properties are already close to SOAEL, the Applicant's approach is inconsistent with the ANPS and NPSE requirement to avoid significant adverse effects on health and quality of life and inconsistent with the NPPF aim to mitigate and reduce potential adverse impacts to a minimum. Additionally, the ExA considered that the Proposed Development would not accord with the requirements of Policy LLP6(B)(iv) to "*identify appropriate forms of mitigation in the event significant adverse effects are identified*" or LLP6(B)(v) to "*achieve further noise reduction or no material increase in day or night time noise or otherwise cause excessive noise including ground noise at any time of the day or night*". The Secretary of State agrees with the ExA's conclusion. As the predicted effects would not comply with National and local policy, but would be of small magnitude, the Secretary of State agrees with the ExA that this would attract moderate weight against the making of the Order [ER 3.18.93 and ER 3.18.100].

444. The Secretary of State notes that Buckinghamshire Council raised concerns about the impacts of early morning traffic movements in Buckinghamshire because it considered that the large percentage increases in traffic identified in the updated COVID-19 modelling could result in noise impacts on sensitive receptors [ER 3.18.91]. Noting the Applicant's explanation that, although the percentage increase of early morning traffic movements was large, this was in the context of low absolute traffic numbers and would not trigger the need for additional noise assessment [ER3.18.92], the Secretary of State agrees with the ExA that as absolute traffic flows would remain low and below the thresholds of assessment, noise impacts would not be significant. Accordingly, she concurs with the ExA that this matter weighs neither for nor against the making of the Order [ER 3.18.94].

Surface Access – Daytime Unacceptable Adverse Effect Level ('UAEL')

445. Various Interested Parties questioned the Applicant's use of a 74dB daytime UAEL and stated a preference for a 71dB daytime UAEL as used in the Heathrow Preliminary Environmental Information Report [ER 3.18.95]. Noting that irrespective of whether a 71dB or 74dB level is adopted, the assessment outcomes and mitigation would remain unchanged [ER 3.18.96], the Secretary of State agrees with the ExA that the use of a 74dB daytime UAEL does not require further consideration [ER 3.18.97].

Surface Access Noise and Vibration – Overall Conclusions

446. The Secretary notes that likely significant adverse noise effects in excess of SOAEL during the day and night are predicted for 55 properties on Crawley Green Road in Phases 2a and 2b of the Proposed Development [ER 3.18.35, Table 7]. Noise insulation is proposed by the Applicant to mitigate these effects if demonstrated to be necessary based on the results of traffic monitoring as part of the outline Transport Related Impacts Monitoring and Mitigation Approach ("oTRIMMA"). The ExA concluded that noise insulation could reduce the predicted effects below SOAEL, and that the mitigation proposed was appropriate with regard to traffic noise for these properties [ER 3.18.99]. The Secretary of State agrees.

447. While the Environmental Statement identifies the potential for significant adverse effects on 20 properties on Stony Lane [ER 3.18.35 and ER 3.18.63], the Secretary of State notes that no mitigation is proposed for the reasons summarised by the Applicant at ER 3.18.101. The Secretary of State agrees with the ExA that due to the absolute numbers of predicted traffic movements, little harm is expected to occur as a result of the Proposed Development and therefore very little weight should be afforded to this matter against the making of the Order [ER 3.18.101].

448. Although the Secretary of State acknowledges that there is potential for both increases and decreases in surface access noise in future years, and while the potential effects were not predicted to give rise to significant adverse effects, she agrees with the ExA that they would not contribute to the aim of paragraph 180(e) of the NPPF to “... *wherever possible, help to improve local environmental conditions*”. She therefore agrees with the ExA that this should carry a little negative weight against the making of the Order [ER 3.18.102].

Operational noise and vibration

449. The Secretary of State recognises that most of the noise issues raised were in relation to the impact of aircraft noise and vibration and the associated effects on health, wellbeing and quality of life [ER 3.18.103].

Fixed plant noise

450. The Secretary of State notes the Applicant's original Fixed Plant Noise Management Plan and the subsequent amendments it made to align its approach to the management of noise from fixed plant to ensure consistency with other consents [ER 3.18.105]. Taking into account that the Joint Host Authorities were satisfied with the revised noise provisions and the Hertfordshire Host Authorities LIR stated that noise impact from fixed plant was not expected to have a significant impact in Hertfordshire was predicted in any operational phase [ER 3.18.106], the Secretary of State agrees with the ExA, who was satisfied that the amended fixed plant noise management plan would avoid significant adverse effects and can be relied upon for the purpose of decision making [ER 3.18.107].

Aviation Noise

Aviation Noise Modelling – the 2019 baseline

451. The Secretary of State recognises that one of the most contentious points of the aviation noise assessment was the Applicant's use of a 2019 'actuals' baseline level which used actual flight data for the modelling of noise contours for certain assessment comparisons, and the 2019 'consented' baseline as a sensitivity study. She is aware that the consented baseline substituted older noisier aircraft in the noise model with quieter new generation aircraft to create a noise contour compliant baseline, and notes that this was raised as a concern in representations from the Joint Host Authorities and other Interested Parties [ER 3.18.110 and ER 3.18.111].

452. The Secretary of State is aware that in 2019, the Applicant was operating in breach of its daytime and night-time contours and notes the concerns that the use of 2019 actual baseline noise levels in the ES would result in artificially inflated baseline levels [ER 3.18.112]. ER 3.18.112 - ER 3.18.113 summarise the representations which argued against the use of 2019 actuals baseline, and which suggested that either the 2019 compliant baseline or a 2022 baseline should have been adopted by the Applicant instead. The Applicant maintained that because the assessment of

significant effects was based on a comparison of a future Do Something scenario against the future Do Minimum scenario with airport operations remaining at 18 or 19 million passengers per annum, rather than a comparison with the 2019 baseline it did not affect the assessment of likely significant effects or conclusions regarding noise related health effects [ER 3.18.119]. The ExA was satisfied that the 2019 ‘actuals’ baseline used did not affect the future noise assessment conclusions since these are based on a comparison of the Do Minimum –Do Something scenarios but considered that the selected baseline would impact on the conclusions relating to policy compliance [ER 3.18.121]. The Secretary of State agrees.

453. The Secretary of State notes that in response to a request made by the ExA, the Applicant offered comparisons with a 2019 consented baseline (which provided a noise contour compliant baseline) and a 2016 baseline (on the basis that 2016 comprised the last year of compliant operations prior to COVID-19) [ER 3.18.115]. The comparisons suggested some decreases during the daytime compared with the 2019 actual baseline, but noticeable increases in noise levels during the night period in Phase 1 and Phase 2b ([ER 3.3.30] explains the phases), with new exposure above SOAEL. In all cases the Do-Something noise levels would be increased over the do-minimum scenario for receptors [ER 3.18.122]. Noting the P19 consent granted in October 2023 which subject to a number of conditions, enabled Luton London Airport to increase its capacity to 19mppa used a compliant 2019 baseline [ER 3.18.113], the ExA was of the view that the 2019 consented baseline provided a more appropriate basis for comparisons as it is based on compliant contours and a compliant 2019 baseline and that this should be used for the purpose of decision making [ER 3.18.123]. The Secretary of State concurs.

454. The Secretary of State has taken account that representations were made which called for the use of a more recent baseline. This was not supported by the ExA because it considered that the impact of COVID-19 on the aviation industry meant that even the most recent data for London Luton Airport might not be fully representative of the anticipated or maximum operations because it is based on lower flight numbers than in previous years due to COVID-19 recovery [ER 3.18.124]. The Secretary of State concurs. While the Secretary of State notes the concerns regarding the method for developing the 2019 consented baseline and its implications for secondary metrics and other assessments, she agrees with the ExA that these matters do not affect policy compliance considerations, which are informed by the change in noise contours, rather than the contextual supplementary metrics [ER 3.18.125].

455. The Secretary of State is mindful of the requirements in local and national policy as set out at ER 3.18.126-7. In particular, the Secretary of State notes that LLP Policy LLP6 B(ii) requires airport expansion proposals to contribute to achieving national aviation policies; the APF discusses the need to limit and where possible reduce the number of people significantly affected by aircraft noise; the OANPS suggests that an overall reduction in total adverse effects is desirable and the APF, ANPS and OANPS recognise that night noise is the least acceptable aspect of aircraft noise and has additional health implications. The Secretary of State notes that the 2016 and 2019 consented baselines suggest some decrease in daytime noise but noticeable increases in night noise levels in Phases 1 and 2b with new exposures above SOAEL [ER 3.18.122] and agrees with the ExA that the increases in noise at night relative to the 2019 consented baseline would not limit and where possible reduce the number of people significantly affected by aircraft noise or demonstrate an overall reduction in total adverse effects [ER 3.18.126].

456. The Secretary of State has considered the requirements of LLP Policy LLP6 B(v) which requires airport expansion proposals to achieve further noise reduction, or no material increase in day or nighttime noise or otherwise cause excessive noise at any time of the day or night and LLP Policy LLP6 B(vii) also requires a significant diminution and betterment of the effects of aircraft operations on the amenity of local residents, occupiers and users of sensitive premises in the area. The ExA concluded that the Proposed Development would cause an increase in noise levels in the future over the 2019 baseline, and although they considered that these effects may be capable of compensatory mitigation in the form of noise insulation, this would contravene the policy aims of the ANPS, NPPF (paragraph 180(e)), the ANPS, the OANPS to achieve reductions in noise levels in future. The effects would also be inconsistent with Policy LLP6 B(v) which aims to “*achieve further noise reduction or no material increase in day or night time noise*” and Policy LLP6 B(vii) to “*result in a significant diminution and betterment of the effects of aircraft operations*”. Accordingly, the ExA attributed this great weight against the making of the Order [ER 3.18.127 and ER 3.18.188]. The Secretary of State agrees. However, she notes that the OANPS allows “*in the context of sustainable growth an increase in total adverse effects may be offset by an increase in economic and consumer benefits*” and considers whether such effects would be offset in the Planning Balance section [ER 3.18.189], concluding that the extensive consumer and economic benefits brought about by the Proposed Development, outweigh the total adverse effects from aviation noise.

Aviation noise modelling - baseline noise monitoring data

457. The Secretary of State recognises the concerns raised by Interested Parties, including the numerous submissions from LADACAN regarding the quality of baseline noise monitoring and its implications for operational noise models as summarised at [ER 3.18.129 – 3.18.132].

458. LADACAN stated that it considered that there were issues with data excluded from a monitoring position in south Luton (‘the LTN_SLTN monitor’) and were concerned that exclusion of this data from the validation may mean that the modelling was over-conservative giving rise to over-lenient noise limits or that it might not be conservative because monitoring could be faulty due to the low elevation of the aircraft and lack of direct line of sight [ER 3.18.130]. Additionally, LADACAN questioned the Applicant’s use of 92-day data from fixed monitors to validate the contour model when the previous integrated noise model had been validated using annual data and further, noting that the sample size data was low and that this should have been highlighted by standard deviation or confidence interval data [ER 3.18.131]. The ExA considered that it was unfortunate that the data was removed from the model since it was representative of one of the areas most affected by noise. The Applicant justified the exclusion of the data and has demonstrated that it operated a regular calibration process, and that a robust validation process had been agreed with the Joint Host Authorities acoustic consultants and the Civil Aviation Authority. Accordingly, the ExA confirmed that it was content with the Applicant’s calibration and validation process [ER 3.18.137]. The Secretary of State has no reason to disagree. The ExA was also satisfied that removing adverse weather from the dataset was standard practice and found no issue with removal of data reflecting inclement weather and that if the model was overpredicting noise levels, this would mean that it represented a robust worst case for assessment [ER 3.18.137]. The Secretary of State concurs.

459. The Secretary of State is aware that LADACAN suggested that if the ExA accepted the noise model as sufficiently representative, a provision should be included

to reduce the contours in future in the event that more accurate validation of the model was conducted and that there should be independent oversight of the validation process [ER 3.18.132]. Like the ExA, the Secretary of State is satisfied that Appendix C of the GCG Framework includes a mechanism to review and revalidate the model on an annual basis in accordance with relevant standards and in consultation with the Noise Insulation Sub-committee (“NISC”) of London Luton Airport Co-ordination Committee and would be subject to independent scrutiny through the GCG Noise Technical Panel. Further, requirement 25 of the draft DCO also included a review mechanism that would allow noise limits to be reduced [ER 3.18.138].

460. While the ExA noted that LADACAN referenced CAA guidance CAP1498 ‘Definition of overflight’ and questioned the reliability of noise measurements due to the elevation angle between noise monitors and overflying aircraft [ER 3.18.132], the ExA considered that CAP1498 guidance is intended to assist the definition of overflights and is not relevant to the monitored results which necessarily reflect factors such as propagation distance and attenuation. The ExA, was not persuaded that CAP1498 has a bearing on the reliability of the monitoring data [ER 3.18.139].

461. The Secretary of State notes that LADACAN highlighted significant errors in the calibration of the noise monitors used to support the P19 permission as detailed in ER 3.18.129. However, the Secretary of State notes the conclusions of the P19 permission and the ExA did not consider that the evidence presented to the Examination suggested a substantive change in data gathering approaches for fixed monitors that would lead to a different conclusion [ER 3.18.141]. The Secretary of State agrees.

462. Overall, the ExA concluded that the baseline noise monitoring was sufficient for the purposes of noise modelling [ER 3.18.140]. The Secretary of State concurs.

Aviation noise modelling - validation and the A321neo

463. The Secretary of State notes extensive submissions from LADACAN and other Interested Parties regarding the Airbus A321neo aircraft, which focused, in particular, on the predicted reduction in noise levels associated with the use of this new generation aircraft which had not materialised due to issues with noise from certain engine variants [ER 3.18.142 – 3.18.144] and the implication of these uncertainties in noise levels on the prediction of future noise impacts [ER 3.18.150]. The Secretary of State notes that, the Applicant accepted that some variants of the A321neo were slightly noisier than expected, but stated this was not more than older generation aircraft and that other variants performed as would be expected from noise certification testing. Further, the Applicant stated that the performance of the A321neo was based on actual noise measurements in assessment Phase 1 and that it was reasonable to assume the engine issue would be resolved by 2039 (Phases 2a and 2b) based on fleet replacement cycles of 10-15 years [ER 3.18.145]. Taking into account the evidence presented with regard to low-cost airlines’ approach to fleet modernisation (considered below), the ExA concluded that it was reasonable to assume that the issues identified with certain A321neo engine variants would be resolved from 2039 and did not undermine the modelling results [ER 3.18.150]. The Secretary of State agrees with this conclusion.

464. The ExA concluded that, in the short term, it considered that the Applicant had evidenced that the model validation process included adjusted modelled flight profiles, radar data, reasonable margins of error and uses noise measurements of actual flight operations at the airport [E ER 3.18.151] and that throughout operation, the GCG

Framework would secure the review and revalidation of the model on an annual basis [ER 13.8.148]. Accordingly, the ExA concluded that the Applicant's modelling assumptions relating to the A321neo could be relied on [ER 3.18.151]. In reaching this conclusion, the ExA took into account that the Joint Host Authorities and the CAA have confirmed agreement with the methodologies, modelling approach, assessment criteria and assessment periods used in the Aviation Environmental Design Tool ("AEDT") noise contour model (including its validation), notwithstanding that the Joint Host Authorities considered that ambient noise monitoring data would have allowed for a greater level of explanation and context to inform the assessment of effect [ER 3.18.149].

Aviation noise modelling – Integrated Noise Model ("INM") and AEDT consistency

465. The Secretary of State is aware that the Applicant currently uses the Integrated Noise Model software, a legacy environmental modelling tool which has been replaced by the AEDT noise contour model in 2015 [ER 3.18.152]. Concerns were raised by Interested Parties regarding the appropriateness of the Applicant's use of the Integrated Noise Model [ER 3.18.154] and its consistency with the AEDT model. The Applicant provided evidence to demonstrate that the Integrated Noise Model had been validated using radar track data and noise measurements, exceeding the CAA validation requirements. The ExA considered that the additional departure profile data showed reasonable correlation with the AEDT model in 2022 [ER 3.18.157] and the annual validation process would address future changes in departure profiles to ensure that the model remained accurate. The ExA concluded that the issues raised did not give rise to any lack of confidence in the modelling process and the noise model could be relied on for the purposes of decision making [ER 3.18.157]. The Secretary of State concurs.

Aviation noise modelling – future fleet forecast

466. Various concerns were expressed by Interested Parties regarding the Applicant's fleet mix and fleet modernisation assumptions as summarised at [ER 3.18.158 – 3.18.160].

467. The Secretary of State notes the potential differences between the P19 permission predicted future fleet mix assumptions and the Proposed Development's Do-Minimum 2027 fleet mix forecast as highlighted by the ExA [ER 3.18.161]. The Secretary of State notes the Applicant's response covered the percentage trends in transition of commercial aircraft and the basis of forecasts between current generation and new generation aircraft as set out at ER 3.18.163 and also that in its closing submissions the Applicant emphasised that any uncertainties in relation to the rate of fleet transition to new generation aircraft would be controlled by the GCG Framework, which would provide a powerful incentive for airlines to modernise their fleets in order to be able to grow, since modernisation would enable more, quieter aircraft to be flown within the same contours [ER 3.18.162]. The ExA considered the Do-Minimum and Do-Something forecasts and identified some variations between the predicted fleet modernisation forecasts for the P19 permission and the Proposed Development's Do-Minimum 2027 fleet forecast and concluded that the Applicant had provided reasonable justification for these differences, and that the GCG Framework would drive improvements in fleet performance in future, thereby securing the outcomes of the assessment. Further, it considered that annual validation of the noise model should capture differences in fleet over time [ER 3.18.167]. The Secretary of State concurs.

468. While the Secretary of State notes that some Interested Parties including the Harpenden Society suggested that certain types of movement like business aviation should be restricted [ER 3.18.159], she notes the arguments put forward by the Applicant [ER 3.18.164] and agrees with the ExA that restriction of certain types of movement would be detrimental to airport commercial operations and would therefore not be appropriate and also that this would not be supported in policy [ER 3.18.168].

469. The Secretary of State has had regard to the representations made by Michael Reddington who stated that the air transport movement numbers were constant in the Do-Minimum scenario which he considered misleading as fleet modernisation would lead to fewer, larger planes requiring fewer flights and that Luton could not support long haul flights due to its runway length [ER 3.18.160]. Like the ExA, the Secretary of State accepts the Applicant's arguments that airlines would largely want to maintain the same frequencies of service as in the Do-Minimum scenario, meaning that load factors rather than flights might change, and that its Need Case stated that long haul flights used to operate between London Luton Airport and Orlando or Cancun [ER 3.18.162]. Accordingly, the Secretary of State agrees with the ExA that if noise levels were overestimated in the Do-Minimum case, this could increase the magnitude of change in noise levels experienced by some receptors but would not change the absolute levels experienced or the eligibility for noise insulation [ER 3.18.169].

470. The Secretary of State agrees with the ExA that there will always be a degree of uncertainty in any forecasting exercise. However, she notes the Updated Faster Growth Scenario GCG noise contours provided by the Applicant based on updated fleet mix information [ER 3.18.165], that the Joint Host Authorities agreed that the conversion of passenger demand forecasts to projections of aircraft movement and fleet mix was appropriate and that the outputs were reasonable for the core planning case [ER 3.18.166] and is satisfied that the forecasts provide a reasonable worst-case basis for assessment and can be relied on for the purposes of decision making. In reaching this conclusion, the Secretary of State recognises that if flight numbers were overestimated, the overall noise impacts and magnitude of noise change would be less than assessed, although it could also enable an increased number of flights to be flown within the assessed contours. The implications for noise contour controls secured by the DCO are discussed below [ER 3.18.170].

Aviation noise modelling – load factors

471. A number of Interested Parties made representations regarding the load factor assumptions applied by the Applicant to its aviation noise emissions [ER 3.18.171 and ER 3.18.173]. Some of these representations suggested that the aircraft load assumptions used by the Applicant were too low (meaning that modelling might over-represent noise by requiring additional aircraft movements), whereas others maintained they were too high (meaning that insufficient aircraft movements might have been allowed for in the model) [ER 3.18.175].

472. The Secretary of State recognises that load factors have the potential to impact modelling as weight increases aircraft noise. While the Secretary of State acknowledges that there is some inherent uncertainty in the load factors for aircraft, she notes that the Joint Host Authorities agreed with the Applicant's modelling approach and methods [ER 3.18.174] and like the ExA, is reassured by the fact that actual load factors have informed the noise model. The ExA considered that if load factors were found to be incorrect, it was more likely that load factors were underestimated based on the airline load factor data provided, which tends to

overestimate noise levels due to additional aircraft movements. Accordingly, the ExA concluded that the noise model in this situation would represent a worst case and was robust for the purposes of decision making. The Secretary of State agrees. Additionally, the Secretary of State is satisfied that if load factors were to change in future, this would be accounted for in the annual validation exercise [ER 3.18.175].

Aviation noise modelling – next generation aircraft

473. In its modelling the Applicant assumed that next generation aircraft (aircraft that will utilise future technologies which includes sustainable aviation fuel, hydrogen and electric engines, that are currently in development) would be no noisier than new generation aircraft (aircraft that are currently in service in relatively small but increasing numbers) and this formed the basis for the assessment of likely significant effects. A sensitivity test to demonstrate the potential benefit from any noise improvement from next generation on this basis was also provided by the Applicant. The Applicant's proposition that next generation aircraft would be no noisier than new generation aircraft was disputed by some Interested Parties who argued that no evidence had been provided to support this contention [ER 3.18.176]. The Applicant responded that the assumptions had not informed the setting of the noise envelope, Thresholds or Limits and that they would be required to comply with those limits meaning that that if the next generation aircraft was noisier the operators would need to find a way to reduce noise levels to comply with the GCG Limits [ER 3.18.176]. Noting the consideration given to this matter by the ExA [ER 3.18.177], the Secretary of State agrees with the ExA that the evidence presented by Interested Parties demonstrates that the noise characteristics of next generation aircraft are uncertain and could be quieter or noisier and given these uncertainties, that little weight should be attributed to the Applicant's sensitivity test that considers next generation aircraft to be quieter than at present. The ExA was content that the Environmental Impact Assessment which assumed that next generation aircraft would be no noisier, paired with noise limits in the GCG Framework to control noise levels, provided sufficient reassurance that the assessment presented a reasonable worst-case that could be relied on for the purposes of decision making [ER 3.18.178]. The Secretary of State agrees.

Operational ground noise and vibration

474. The Secretary of State notes that Interested Parties questioned the conclusion reached by the Applicant in Appendix 16.1 of the Environmental Statement that, in some instances, the operational ground noise would be less in the Do Something than the Do Minimum scenario [ER 3.18.180]. Noting the Applicant's explanation that the construction of raised platforms and buildings, acoustic barriers and the engine run up bay would reduce operational noise levels [ER 3.18.181], like the ExA, the Secretary of State is satisfied that the new building works might result in lower ground noise levels in the Do-Something scenario for certain receptors due to the provision of noise barriers [ER 3.18.183].

475. The Secretary of State notes that some Interested Parties questioned why ground noise was only modelled and were of the view that ground contour drawings were contradictory in terms of lowest observed adverse effect level ("LOAEL"– the level above which adverse effects on health and quality of life can be detected) and SOAEL levels [ER 3.18.180]. Noting the Applicant's response and that its approach to ground noise modelling was agreed with the Joint Host Authorities [ER 3.18.182], the Secretary of State is satisfied that separate noise modelling of different noise sources is supported by the World Health Organisation and WebTag guidance. Like the ExA,

the Secretary of State has not seen any specific evidence to suggest that the ground noise contour drawings contradict themselves [ER 3.18.183].

476. The Secretary of State is aware that the ES includes details of the ground noise modelling approach, assumptions and limitations and provides model outputs. Like the ExA the Secretary of State is satisfied that the Applicant has provided appropriate ground noise modelling outputs [ER 3.18.183] and in reaching this conclusion, has considered that the Joint Host Authorities agreed with the Applicant's approach to ground noise modelling, assessment and compensation. The ExA concluded that the modelled ground noise outputs provided in the ES were sufficient for the purposes of decision making [ER 3.18.185]. The Secretary of State concurs.

477. Regarding vibration, while the Secretary of State notes that the qualitative operational vibration assessment is very high level, like the ExA, she is satisfied that it addresses relevant vibration sources and provides justification for its conclusions [ER 3.18.184].

Operational noise and vibration – overall conclusions

478. In conclusion, the Secretary of State agrees with the ExA that the Applicant's revised fixed plant noise management plan offers a suitable mitigation approach that would avoid significant noise and vibration impacts and that accordingly, the impact of fixed plant noise and vibration would be neutral [ER 3.18.186]. Further, she agrees with the ExA's conclusion that the Applicant's operational aviation and ground noise and vibration assessments and modelling provide a reasonable basis for assessing aviation noise levels and for decision making [ER 3.18.187].

479. As set out above, the ExA considered the performance of the Proposed Development against the 2019 consented baseline and is of the view that noise levels would not be reduced in a number of future scenarios and concluded that this would not fully accord with the policy aims of the ANPS, NPPF (paragraph 180e), the ANPS, the OANPS to achieve reductions in noise levels in future and Policy LLP6(v) aims. Accordingly, the ExA considered that this attracted great weight against the making of the Order [ER 3.18.188]. However, the ExA noted that the OANPS provides, in the context of sustainable growth, that an increase in total adverse effects from aviation noise may be offset by an increase in economic and consumer benefits [ER 3.18.189]. The Secretary of State considers whether such effects would be offset in the Planning Balance below.

480. While the Secretary of State notes that the ExA identified some areas of uncertainty in the forecasts and the potential for over estimation of noise levels [ER 3.18.190], she notes the Updated Faster Growth Scenario contours provided by the Applicant, and is content that the inclusion of an annual validation process within the GCG Framework would provide flexibility to adapt to changes in flight operations, load factors and other variables in future. To achieve further reductions in future noise levels, the ExA proposed that noise contour limits should be based on core growth contours, rather than Updated Faster Growth Scenario contours [ER 3.18.191]. The Secretary of State considers this in more detail below.

GCG Framework – noise

GCG – noise envelope as a standalone provision

481. The Secretary of State notes that Interested Parties including LADACAN and St. Albans Quieter Skies argued that noise controls should be separate from the GCG

Framework since there was greater policy certainty around the noise envelope concept than for other effects [ER 3.18.197]. While the Joint Host Authorities considered that as long as controls could be enforced, it did not matter if they were on the face of the Order, Bedfordshire Council considered the noise controls should be separate from the GCG Framework for clarity and Central Bedfordshire Council were of the view that including noise controls within the GCG Framework would make enforcement more difficult [ER 3.18.198]. Although the Secretary of State is aware that the Applicant disagreed with securing controls on the face of the Order for the reasons summarised at ER 3.18.201, she agrees with the ExA that it did not wish to obstruct innovation in aviation noise controls or restrict flexibility but considers that such innovation should not be at the expense of the necessary certainty required by local communities of the likely totality of effects that could be experienced if development consent were granted [ER 3.18.202]. While the Secretary of State notes the Applicant considers that the circumstances under which contour areas could increase are limited, she agrees with the ExA that increasing the contour area has the potential to create significant, unassessed effects for receptors that may not have been consulted on the Proposed Development and a sufficiently robust mechanism is needed to avoid this. Like the ExA, the Secretary of State therefore considers that noise contours should be placed on the face of the Order [ER 3.18.203] as she considers that it would increase transparency. Setting the contour limits as a requirement means that any change sought will require the consent of the Secretary of State ensuring that there is an opportunity for affected persons and bodies to provide representations on any application. It also allows for the Secretary of State to be confident that any change sought is supported by such updated environmental information as is required so that an informed decision can be made through the change process.

482. The Secretary of State notes the GCG Framework noise controls were based on day and night noise contour limits taken from the Applicant's faster growth scenario sensitivity test (that 32 million passengers per annum is reached in 2042 [REP9-011, Table 16.74, entry for faster growth scenario]). The Applicant stated that this was to ensure that effects did not exceed the assessed reasonable worst case [ER 3.18.207]. Interested Parties including the Joint Host Authorities and Buckinghamshire Council considered that noise controls should be based on the core growth scenario and that using a faster growth scenario did not comply with the OANPS requirement to mitigate noise as far as possible [ER 3.18.208]. This issue was considered by the ExA who queried the fleet forecast and fleet modernisation assumptions and whether the use of a faster growth assumption would be policy compliant, since it would increase the number of receptors exposed to noise levels in excess of SOAEL compared with the core growth scenario, which would require additional properties to be insulated to avoid effects in the period up to 2027 [ER 3.18.211].

483. The Secretary of State notes the updated fleet mix information subsequently provided by the Applicant which it used to inform an updated faster growth scenario with reduced noise contour limits (although higher than the core growth scenario limits) which was accompanied by an assessment of the total adverse effects on health and quality of life. She further notes that the Applicant argued that covering the full cost of noise insulation for eligible properties that accepted an offer would avoid significant effects arising in Phase 1 construction period 2025 to 2027 [ER 3.3.30], thereby limiting and reducing noise effects and that there would be no difference in residual effects [ER 3.18.212]. The Secretary of State is aware that this matter remained

unagreed with the Joint Host Authorities and Bedfordshire Council at the close of Examination [ER 3.18.213]. While the ExA acknowledged that using a faster growth scenario would be acceptable if considered purely in Environmental Impact Assessment terms, it considered that the increase in numbers of receptors affected by noise levels above SOAEL and the increase in the night-time noise contour areas compared with the Do-Minimum scenario would not be consistent with LLP6B(v) which looks to achieve “further noise reduction or no material increase in day or night time noise” or LLP Policy LLP6B(vii) which requires “significant diminution and betterment of the effects of aircraft operations on the amenity of local residents” [ER 3.18.214]. Further, the ExA considered that the Applicant could only meet the OANPS requirement as set out in ER 3.18.215 in part due to the time lag between increasing aviation noise levels and installing noise insulation to avoid effects above the SOAEL which could be up to four years, assuming that the Applicant’s delivery programme is met. The ExA considered that this time lag would also temporarily contravene the objectives of the NPSE which requires the avoidance of effects above SOAEL and minimisation of effects between LOAEL and SOAEL [ER 3.18.216]. The Secretary of State agrees.

484. The ExA concluded that the increase in noise levels over the Do-Minimum scenario, particularly at night, weighed against the making of the Order, even if core growth noise contours were used which it considered would be more consistent with policy. Further, the ExA considered that a requirement should be included to secure noise contours on the face of the Order, based on core growth assessments [ER 3.18.217].

485. In her further information request dated 2 August 2024, the Secretary of State asked the Applicant to suggest wording for a requirement which would secure noise contour limits on the face of the Development Consent Order based on the core growth predictions in Tables 7.40, 7.43, 7.46, 7.49, 7.52 and 7.55 of Appendix 16.1 of the Environmental Statement Appendix 16.1 Noise and Vibration Information and to provide amendments to the GCG Framework table 3.1 and Air Noise Management Plan (and any linked documents) to ensure compliance and support the monitoring and reporting with the proposed wording of the draft requirement to secure noise contour limits. ‘Without prejudice’ wording was therefore provided by the Applicant in its response dated 19 August 2024. In its letter dated 5 September 2024 in response to the Secretary of State’s further information request dated 23 August 2024, Suono on behalf of the Joint Host Authorities, commented that the draft wording provided by the Applicant was based on the noise contour limits based on the Updated Faster Growth Case in accordance with those set out in REP9-055, rather than those based on the core growth predictions as requested by the Secretary of State. This matter was also raised by various other Interested Parties. On 27 September 2024, the Secretary of State invited further comments from the Applicant. In its response dated 11 October 2024, the Applicant confirmed that the limits in the draft wording it had provided were based on the Updated Faster Growth Predictions and considered that it had justified the use of these limits throughout the Examination. The Secretary of State disagrees.

486. The Secretary of State considers that basing noise contours on the faster growth scenario would strike an incorrect balance between facilitating growth at the airport and protecting the amenity of affected communities by allowing more receptors to be subjected to noise levels in excess of SOAEL [ER 3.18.211] than is necessary to allow the benefits of the Proposed Development to be realised. The mitigation

proposed in the form of insulation fails to comply with policy in the faster growth scenario by not avoiding significant noise impacts as required by the ANPS (paragraph 5.57) and NPPF and the NPSE where, as in this case it is reasonable and practicable to do so, but instead seeks to address them after they have occurred and the potential for a meaningful time lag before mitigation is in place [ER3.18.215].

487. The Secretary of State agrees that a requirement setting noise levels based on the core growth scenario is necessary to ensure sufficient protections are in place for the local community. The Secretary of State notes that the ExA concluded that even with this limit based on core growth contours the increase in noise levels over the Do-Minimum scenario, particularly at night, weigh against the making of the Order [ER3.18.217]. The Secretary of State considers whether such effects would be offset in the Planning Balance below.

GCG – Noise Contour Area Flexibility

488. The Secretary of State notes that the Applicant confirmed the GCG Framework review process could enable a noise contour increase as well as a decrease, but that an increase would only be possible in limited circumstances [ER 3.18.218]. The Secretary of State notes that while the Joint Host Authorities accepted this approach, they clarified that no increases would be acceptable where there were no attributable noise benefits and that LADACAN considered this approach to be unacceptable and maintained that a ‘protection’ would be required to ensure that fewer people were within the noise contour [ER 3.18.219].

489. The Secretary of State agrees with the ExA that GCG noise contour increases would only be acceptable if it reduced the total number of people affected by significant noise levels, subject to any associated Environmental Impact Assessment and/or public consultation that might apply. Although the Secretary of State is aware that the Applicant opposed the inclusion of a requirement which would require the Applicant to obtain written approval from the Secretary of State for an increase in the contour limits for the reasons summarised at [ER 3.18.220], she agrees that the inclusion of such a provision would provide certainty to local communities that an increase in contour areas would be warranted, would be in the public interest and consistent with the outcomes of the Applicant’s Environmental Impact Assessment. Accordingly, the Secretary of State agrees with the inclusion of the ExA’s proposed requirement in the recommended Order for the reasons outlined [ER 3.18.221].

GCG - incentivisation of future noise performance and reduction in noise over time

490. The Secretary of State notes that the LIR of Central Bedfordshire Council, the Hertfordshire Host Authorities and Luton Borough Council considered that the Applicant claims that the Proposed Development would result in the reduction of noise over time compared to a 2019 baseline were incorrect because noise levels would rise above the Do-Minimum levels currently permitted in future years and would not reduce back below these levels [ER 3.18.222]. Although the Secretary of State notes the Applicant’s position that noise in the future would be reduced compared to a 2019 baseline [ER 3.18.224 – 3.18.225], she agrees with the ExA that comparisons with the 2019 consented baseline show worsening in night noise levels over time and ES Chapter 16 demonstrates that noise levels would increase in all future year scenarios compared against the Do-Minimum scenario [ER 3.18.228].

491. The Secretary of State notes that the LIR concluded that there would be a negative impact from aircraft noise on local communities and the Luton Borough

Council's LIR stated that the proposals did not strike a fair balance between noise and sharing the benefits of growth [ER 3.18.222]. The Applicant's interpretation of sharing the benefits of growth was also questioned by Interested Parties [ER 3.18.223]. The ExA found that even with the 2019 actuals baseline, the Applicant's Operational Noise Management (Explanatory Note) suggested some sharing of benefits in the daytime but in the worst case, no benefits may accrue in the night-time for local communities [ER 3.18.226 and ER 3.18.228].

492. The ExA concluded that the Applicant had not demonstrated that its noise envelope approach mitigated potential adverse impacts to a minimum and considered that this approach was not consistent with the ANPS requirement to limit and where possible reduce the impact of aircraft noise or with the OANPS requirement to limit and where possible reduce the total adverse impacts on health and quality of life from aviation noise. Accordingly, the ExA attributed this moderate weight against the making of the Order [ER 3.18.229]. The Secretary of State agrees.

493. The ExA also considered that use of the core case noise contours would set more challenging noise limits for the Applicant and incentivise the use of quieter technology and operating methods. The ExA considered that this would also contribute to meeting the objective of the NPPF (paragraph 191a) to "mitigate and reduce to a minimum, potential adverse impacts resulting from new development". To address this, the ExA proposed including a new requirement securing core growth noise contours. The Secretary of State considers this further in the GCG – faster growth noise contours section above [ER 3.18.230].

GCG – additional noise controls - annual movement cap

494. The Secretary of State notes that various parties, including the Joint Host Authorities, considered that additional metrics, including aircraft movement limits, should be included within the GCG Framework [ER 3.18.231]. The ExA asked the Applicant and Local Authorities what numeric value of movement cap would be appropriate for the Proposed Development if one were to be imposed [ER 3.18.232]. The Applicant proposed that a limit should be no less than 225,000 annual aircraft movements for the reasons summarised at ER 3.18.233, stating that it considered that there should be flexibility allowed in the annual movement limit above the numbers assessed in the ES [ER 3.18.241]. The Applicant's proposed 225,000 annual aircraft movement cap was opposed by various parties, including the Joint Host Authorities who considered that the Applicant had provided no justification for the movement limits cited, and suggested that the annual movement limit should instead be 209,410 as this had formed the basis of assessment for the worst-case scenario in the ES [ER 3.18.234].

495. The Secretary of State reviewed the representations from Interested Parties that highlight that the number of flights rather than the average noise level was a primary concern, and that both the APF and the Applicant accept that people do not experience noise in an averaged manner [ER 3.18.238]. Having reviewed the CAA guidance CAP1129 'Noise Envelopes' and CAP1731, the ExA considered that a movement cap would not be inconsistent with CAA guidance, provided other measures incentivised the use of quieter aircraft [ER 3.18.239]. The Secretary of State concurs. Given local community concerns regarding the increased frequency of flights and the number of representations that outline the impact of London Luton Airport on outdoor spaces, the Secretary of State agrees with the ExA that noise contour limits should be paired with a movement limit to provide certainty regarding the total number

of movements to be consented and that the Applicant's proposed use of Quota Count limits in combination with a movement cap would serve to incentivise use of quieter aircraft [ER 3.18.240].

496. The Secretary of State notes the consideration given by the ExA to the representations on the level of a movement cap and agrees with the ExA that it would be inappropriate to allow movements exceeding the assessed parameters. Accordingly, the Secretary of State agrees that a cap of 209,410 annual aircraft movements (the worst-case scenario in the ES) [ER 3.18.234] would be appropriate [ER 3.18.241].

497. The Secretary of State notes that the ExA concluded that because the Proposed Development was not fully tailored to local priorities, it would not meet the requirements of ANPS (paragraph 5.60) and therefore proposed a new requirement which would secure an annual limit of 209,410 aircraft movements. The Secretary of State agrees with the ExA that with the inclusion of this requirement, paragraph 5.60 of the ANPS would be satisfied. However, the increase in flights could result in increased noise above the baseline and this would not comply with the LLP6(v) requirement to achieve further noise reduction, or no material increase in day or nighttime noise. The ExA was of the view that, even with this control, a capped increase in flights would attract great negative weight against the making of the Order [ER 3.18.242]. The Secretary of State agrees.

GCG – additional noise controls – shoulder period movement cap.

498. The Secretary of State is aware that in accordance with the P19 permission, London Luton Airport currently operates with an early morning shoulder period (06:00 to 07:00) limit of 7,000 annual movements. While the Hertfordshire Host Authorities LIR and the Luton Borough Council LIR proposed that these shoulder period movement cap controls should be retained [ER 3.18.243], the Secretary of State notes that the Applicant was of the view that imposing such limits were unnecessary for the reasons summarised at ER 3.18.245 and notes its further representations regarding this matter in its consultation response dated 11 October 2024.

499. The Secretary of State recognises that increases in flights during the night period are of particular concern to the local community [ER 3.18.253] and notes the representations made by various Interested Parties who considered that there should be either no increase or a decrease from the current early morning shoulder limit (which forms part of the night period), and the various shoulder movement limits proposed [ER 3.18.246-248]. While the Secretary of State accepts that proposals for expansion, even at night, are not inconsistent with national policy, provided that all relevant considerations are taken into account [ER 3.18.254], she agrees with the ExA that the movement increases during the night period and in the Do-Something scenario over the Do Minimum scenario would be inconsistent with Policy LLP6B(v) which looks to achieve "further noise reduction or no material increase in day or night time noise" and Policy LLP6B(vii) which requires "significant diminution and betterment of the effects of aircraft operations on the amenity of local residents" [ER 3.18.255].

500. Like the ExA, the Secretary of State acknowledges that increases in aircraft movements in the shoulder period are likely to increase activity on the Main Application Site and noise effects for receptors in the night quota period (before the shoulder period) as planes prepare for take-off. However, the Secretary of State recognises that such effects would be mitigated through the proposed noise insulation scheme and embedded measures such as operating procedures, building layouts and acoustic

barriers. The Secretary of State therefore agrees that the increased harm would ultimately be offset by noise insulation following rollout, which would satisfy the requirements of the NPSE, NPPF, PPGN and Policy LLP38 in the longer term to avoid effects above SOAEL and mitigate or minimise effects between LOAEL and SOAEL [ER 3.18.256].

501. With regard to what would constitute an appropriate annual shoulder movement limit, the Secretary of State agrees with the ExA that it would be inappropriate to apply limits from other airports with different operating models [ER 3.18.258] and that the same principles should apply to the definition of the shoulder period limit as for the annual movement limit. Like the ExA, the Secretary of State is satisfied that there should be an annual shoulder movement limit of 12,460 which is the figure assessed in the ES. This would be broadly consistent with a proportional increase from 18 to 32 million passengers per annum [ER 3.18.259]. In reaching this decision the Secretary of State notes the consideration given by the ExA to the alternative shoulder movement limits proposed, including those suggested by the Joint Host Authority [ER 2.18.247], Harpenden Society [ER 3.18.251] and LADACAN [ER 2.18.248]. However, she agrees with the ExA's reasoning summarised at ER 3.18.257, ER 3.18.260 and ER 3.18.261 and does not consider that a strong case has been presented for departing from the figures set out in the ES [ER 3.18.262].

502. The ExA concluded that the Proposed Development was not tailored to local priorities, that it did not include a clear noise performance target and would not meet the requirements of ANPS (paragraph 5.60). The ExA therefore proposed including a new requirement that secures a shoulder period limit of 12,460 movements. Like the ExA, the Secretary of State is satisfied that with this new requirement, the Proposed Development would meet the requirements of ANPS (paragraph 5.60). However, even with the new cap in place, noise levels would still give rise to significant adverse effects in the absence of mitigation [ER 3.18.263].

GCG – additional noise controls - other metrics or controls and measures under the International Civil Aviation Organisation balanced approach

503. The Secretary of State notes that various Interested Parties including LADACAN, Harpenden Sky and the Joint Host Authorities suggested that the noise envelope design should include other metrics and controls such as a reduction in the future night-time quota control limit to 2,800, track and noise violation limits and the continuation of the complaints scheme. LADACAN also argued that the Applicant had not clearly documented its approach to mitigating operational noise, nor had it applied operational restrictions at night in line with the International Civil Aviation Organisation's balanced approach [ER 3.18.264] to aircraft noise management which is based on the following four principals:

- reduction of noise at source;
- land-use planning and management;
- noise abatement operational procedures; and
- operating restrictions [ER 3.18.4].

504. The Secretary of State notes that the Applicant's Air Noise Management Plan ("ANMP") includes Quota Count controls, track and noise violation limits, a night-time restriction on aircraft with a Quota Count of two or more and that the s.106 secures payment of fines for track and noise violations into the community fund [ER 3.18.265].

Further, she notes that a number of the controls in the ANMP and Appendix G of the GCG were agreed with the Joint Host Authorities during the Examination. Accordingly, the Secretary of State is satisfied that a separate requirement is not necessary and also that it would not be appropriate to secure an additional reduction in noise violation limits after 2028 at this time due to the uncertainty regarding next generation aircraft and given the mechanisms in the ANMP and GCG Framework to review these limits in the future [ER 3.18.271].

505. While the Secretary of State notes that the Joint Host Authorities recommended a reduction in the future nighttime Quota Count to 2,800, she agrees with the ExA that applying this control from the 19mppa consent to a 32mppa consent would be inappropriate as it could restrict the growth sought (though she acknowledges that it would be consistent with a trend of a reduction in aircraft noise levels over time). In her consideration, the Secretary of State has taken into account that the GCG Framework includes a mechanism to review contour limits and associated Quota Count budgets in future, which allows for further reductions where appropriate as agreed with the Environmental Scrutiny Group [ER 3.18.272].

506. The mitigation measures considered by the Applicant are summarised at ER 3.18.267. Like the ExA, the Secretary of State is satisfied that the measures set out demonstrate that the Applicant has adopted a balanced approach to mitigation and agrees with the ExA that although one measure could be an operating restriction, the International Civil Aviation Organisation balanced approach does not require a reduction in night flights. While the Secretary of State recognises that there are additional operating measures in the Noise Action Plan that may serve to mitigate noise at source, like the ExA, the Secretary of State attributes little weight to these measures in view of comments made by LADACAN and the Hertfordshire Host Authorities [ER 3.18.273] that a number of operational measures were either already in operation or had been trialled but were not being progressed [ER 3.18.270].

507. LLP Policy LLP6 B(iv) requires the identification of “appropriate forms of mitigation in the event significant adverse effects are identified”. Policy LLP38 requires that impacts are suitably mitigated. The ANPS (paragraphs 5.54 to 5.66) set out mitigation criteria, including the concept of the ‘balanced approach’. The ExA considered that the ES and mitigation plans, including the fixed plant management plan, GCG Framework, ANMP, outline ground noise management plan, CoCP and oCTMP encompass the four principal requirements of the ‘balanced approach’ [ER 3.18.274] and that the proposed approach towards mitigation is consistent with the requirements of national and local policy as it provides an effective noise control, monitoring and management scheme [ER 3.18.275]. The Secretary of State concurs.

GCG – whether the framework is a proactive control

508. The Secretary of State notes that various Interested Parties raised concerns that the initial GCG Framework noise proposals were reactive due to a ‘transition period’. This was because the assessment of whether thresholds or limits were exceeded would be retrospective as there would be a time lag between the Applicant serving notice under article 44(1) to increase the permitted passenger cap, and the commencement of the monitoring and control processes [ER 3.18.276]. The ExA explored the implications of airport capacity declarations, slot allocations and local rules [ER 3.18.278]. The Secretary of State notes that the ExA established through questioning, that there were very few circumstances where allocated slots could be removed once allocated due to grandparenting rights in the slot allocation regulations

[ER 3.18.282] and that if a limit was exceeded, it would therefore be challenging to return to a compliant operation in the short to medium term [ER 3.18.287].

509. In response to these concerns, the Secretary of State notes that the Applicant removed the transition period from its draft Order [ER 3.18.284] and made provision for Quota Control budgets derived from noise contour thresholds and limits to serve as forward looking proactive control [ER 3.18.283]. The ExA considered that the removal of the transition period for noise monitoring partially addressed the concerns raised by creating continuity with the controls in the previous operational consent and that the proposed conversion of noise contour thresholds and limits into quota control budgets would ensure that the controls would proactively serve to avoid exceedances of the limits. This was because mitigation would be triggered as thresholds were progressively exceeded, including controls through capacity declarations and slot allocations [ER 3.18.288].

510. While the Secretary of State notes that the Applicant expressed concern regarding the implementation of noise monitoring processes 12 months in advance of implementing article 44(1) for the reasons set out at ER 3.18.286, she agrees with the ExA that without baseline monitoring, it would be difficult for the Applicant to understand whether it was already close to exceeding a limit. The ExA, therefore, included a requirement for a year of monitoring to ensure that slot allocations can be made appropriately in the year following serving of an article 44(1) notice [ER 3.18.288]. The Secretary of State is satisfied that this inclusion is appropriate and agrees with the ExA that with this requirement, the final controls are partially consistent with the requirements of Policy LLP6(B)(vi) in that they would provide an effective noise control, monitoring and management scheme [ER 3.18.289].

GCG – whether increases in capacity should be phased or linked to noise performance

511. The Secretary of State notes the consideration given by the ExA to whether increases in capacity should be linked to the delivery of noise insulation to avoid effects exceeding SOAEL for receptors [ER 3.18.290]. Noting that there is no precedent for such a control measure and that property owners cannot be compelled to accept an offer of noise insulation, which could mean the Applicant would be unable to fulfil its obligations under the DCO and therefore unable to commence development, the ExA concluded that capacity increases could not be linked with noise insulation rollout [ER 3.18.291]. The Secretary of State concurs.

GCG Sanctions

512. The Secretary of State is aware that, if a noise contour limit is exceeded, requirement 24 of the draft Order requires the Applicant to produce a mitigation plan setting out measures to reduce noise levels to ensure compliance and a new mitigation plan would be prepared after two years if the plan fails to achieve this [ER 3.18.292]. The Secretary of State agrees with the ExA that requirement 24 as drafted by the Applicant provides little assurance that a continuing breach of limits would be avoided [ER 3.18.300] and that regardless of the arguments for and against a financial penalty (as considered below), an additional control is necessary to ensure that the Applicant could not benefit from excess growth under a prolonged breach of a limit at the expense of increased noise impacts on local communities [ER 3.18.300].

513. Further to representations expressing concern regarding the potential for an ongoing breach of the noise contour limit and lack of consequence for continued breaches, the ExA included a requirement which would impose a financial penalty after

12 months to act as an incentive against continued breaches [ER 3.18.293]. Although the Secretary of State recognises that the Applicant was opposed to this inclusion for the reasons set out in ER 3.18.294 and ER 3.18.298-299, she has had regard to the arguments put forward by various Interested Parties including the Joint Host Authorities, who supported the imposition of a financial penalty [ER 3.18.296-7]. While the ExA did not agree with some of the Applicant's arguments regarding Planning Practice Guidance for Noise tests, it was persuaded that a financial penalty mechanism would be novel in the UK and place the Applicant at a commercial disadvantage and that its proposed inclusion in requirement 24 should not be adopted. However, the ExA considered that contour limits should be secured on the face of the Order to provide certainty regarding enforcement mechanisms which is considered further in the GCG – noise envelope as a standalone provision section above [ER 3.18.301]. The Secretary of State agrees with this conclusion.

GCG – Quota Count budgets and dispensation

514. In response to the Hertfordshire Host Authorities LIR which considered that dispensations should not be allowed from quota control budgets, the Applicant updated its approach in the ANMP to align it with DfT guidance [ER 3.18.302]. Noting that the Joint Host Authorities did not raise any issues with dispensations, like the ExA, the Secretary of State is satisfied that the updated wording in the ANMP addresses the Hertfordshire Host Authorities' concerns regarding dispensations and that there is no need for any further amendments to the ANMP following the revised guidance issued by DfT on 22 February 2024 following the close of the Examination [ER 3.18.303].

GCG – noise envelope community engagement

515. The Secretary of State recognises the concerns which suggested that the final noise envelope submitted had not been consulted on or agreed, was not that recommended by the Noise Envelope Design Group and had not followed CAA guidance in CAP1129. [ER 3.18.304]. The ExA explored the extent to which community engagement had, or needed to, inform the development of the noise envelope and the status of CAP1129 [ER 3.18.305], and had regard to ES Appendix 16.2, which set out why the Applicant considered the noise envelope to be policy compliant and detailed its statutory consultation and consultations with the NEDG (and interim and final reports) and the wider community. The ExA also noted the further arguments put forward by the Applicant in [REP6-067] that the final proposals were a refinement and reduction of the Limits discussed at the statutory consultation stage and that compliance with CAP1129 was not legally binding [ER 3.18.306]. The ExA concluded that ES Appendix 16.2 demonstrated that the noise envelope was developed in consultation with the community consistent with the requirements of CAP1129 [ER 3.18.307]. The Secretary of State concurs.

516. Although the Secretary of State notes that the Applicant did not consult on the specific details of the final noise envelope prior to submission, the ExA was satisfied that the Examination process provided further opportunity for exploration of the final noise envelope design in public. In light of this and taking into account the comment from the Noise Envelope Design Group chair that the noise envelope aligns with Noise Envelope Design Group proposals, the ExA considers that the final noise envelope design is consistent with the requirements of Policy LLP6(B)(iv) and LLP38 to develop appropriate forms of mitigation and the requirements of the MBU and ANPS, that

mitigation is subject to consultation with local communities [ER3.18.307]. The Secretary of State agrees.

GCG – Overall Conclusions

517. Overall, the Secretary of State notes the consideration given by the ExA to the GCG Framework noise controls and the issues it identified with the level of control that it would provide over aviation noise emissions. The ExA made a number of recommendations to secure controls on the face of the Order including noise contours, aircraft movement limits and monitoring as it considered that this would avoid the need to apply a sanctions regime in the event of continued breaches of a limit [ER 3.18.30]. The Secretary of State agrees.

Compensation Policies, Measures and Community First

518. The Secretary of State notes that the following key issues regarding compensation policies and measures were not agreed at the end of the Examination [ER 3.18.312]:

- Eligibility criteria;
- Noise insulation delivery programme;
- Outdoor noise compensation;
- Compensation for Park Homes; and
- Compensation for Listed Buildings.

Compensation Policies – eligibility

519. The Secretary of State notes the questions raised by various Interested Parties regarding eligibility for the proposed compensation policies as summarised at ER 3.18.313, together with the requests for clarification made by the ExA and the Applicant's responses [ER 3.18.315-320].

520. Like the ExA, the Secretary of State recognises that the Applicant applied an eligibility criterion of 63dBLAeq16hr or above but also adopted criteria of 60 dBLAeq16hr in scheme 2 and 54dBLAeq16hr in Scheme 5 as consistent with the recommendations of Aviation 2050. The ExA concluded that the Compensation Policies were substantially enhanced compared with the current London Luton Airport policy and considered that the Applicant had provided an appropriate package of measures, relevant to planning consistent with the requirements of the ANPS (paragraph 5.240) which recognises that airport expansion will have negative impacts on local communities and that an appropriate community compensation package, relevant to planning is expected [ER 3.18.322 and ER 3.18.226]. The Secretary of State agrees. In reaching this conclusion the Secretary of State has taken into account the online eligibility look-up tool that provides certainty to local residents regarding their compensation offer [ER 3.18.325]. Although the Secretary of State recognises that noise insulation works may give rise to some disruption and noise in their own right, she agrees with the ExA that these effects would be temporary in nature and unlikely to be significant [ER 3.18.323].

521. The Secretary of State notes the Interested Parties including LADACAN and Michael Reddington argued that there should be some flexibility in the noise insulation eligibility cut-off date on the basis that properties in construction on this date could not have been expected to take account of the mitigation requirements for the Proposed

Development [ER 3.18.314]. Taking into account the proposed flexibility suggested by the Applicant regarding the cut-off date for those able to demonstrate that they could not reasonably have known about the Proposed Development [ER 3.18.314], the Secretary of State agrees with the ExA that a cut-off date is reasonable to avoid an open-ended commitment by the Applicant to continue to provide noise insulation to properties designed and built after the decision on the Proposed Development is publicly known [ER 3.18.324].

522. The Secretary of State has had regard to the consultation response from Michael Reddington dated 11 September 2024 who queried whether the amended definition in Table 1.1 of TR020001/APP/7.10 would change the number of eligible properties for the noise insulation scheme and whether it would have any implications for funding. Noting the Applicants consultation response dated 11 October 2024, the Secretary of State is satisfied that this amendment does not affect the total number of eligible properties for the noise insulation schemes, nor would it have any implications for funding.

523. The Secretary of State has considered the change made to paragraph 6.1.37 of the Compensation Policies, Measures and Community First document as submitted on 21 August 2024, limiting the scope of the roll out plan for noise insulation to air noise schemes 1 to 3 and has also had regard to the representation from LADACAN dated 6 September 2024 who raised concern about eligibility to access noise insulation being tightly drawn. The Secretary of State has taken into account the Applicant's response dated 11 October 2024 to the further information requested on this matter dated 27 September 2024, and the ExA's conclusion as set out above that the Compensation Policies were substantially enhanced compared with the current LLA policy, and that the Applicant had provided an appropriate package of measures, relevant to planning consistent with the requirements of the ANPS (paragraph 5.240). She is content that the Applicant's proposed approach assures the delivery of the full package of mitigation as submitted and does not agree that the eligibility for noise insulation has been tightly drawn.

Compensation Policies – delivery programme

524. The Secretary of State is aware that the Applicant's delivery programme paper confirms that Schemes 1-3 could be delivered in four years and a commitment set out in paragraph 6.1.37 of the Compensation Policies and secured by a section 106 agreement [ER 3.18.328]. Some Interested Parties questioned the likelihood of a timely delivery of the noise insulation roll out, the absence of a deadline for the delivery and a lack of noise insulation contractors [ER 3.18.327] and requested that the four-year timescale was secured in the DCO [ER 3.18.332].

525. The Secretary of State notes the new requirement proposed by the ExA which sought to secure the timelines for the noise insulation delivery programme rollout and provide a means of measuring progress on delivery of noise insulation through reporting to Luton Borough Council [ER 3.18.331]. The Secretary of State notes that although aspects of the proposed requirement were subsequently included in the Applicant's compensation policies, these compensation policies included the caveat that *"At any time, the Applicant will be able to apply to LBC to update or vary the roll out plan, following consultation with the Noise Insulation Sub-Committee of LLACC"* [ER 3.18.333]. The Secretary of State concurs with the ExA that given the potential complexity of rollout of mitigation, some flexibility is reasonable. However, she also considers that as the delivery timescale for noise insulation directly affects conclusions

regarding the significant effects of the Proposed Development and whether it is compliant with the requirements of the NPSE, OANPS and ANPS (paragraph 5.251), a requirement is necessary on the basis that the current wording could allow a change in the programme to result in a longer duration of significant noise effects, which would be inconsistent with paragraph 5.251 of the ANPS [ER 3.18.334]. The Secretary of State fully supports the inclusion of this new requirement proposed by the ExA which she considers would ensure that delivery timescales are subject to robust controls and any changes to approved plans would only be permissible with her agreement. The Secretary of State notes that this requirement goes further than what was originally proposed by the Applicant and prevents any increase in passenger capacity until the noise mitigation delivery plan has been agreed by the relevant planning authority and implemented by the airport.

526. With the inclusion of this requirement, the Secretary of State is satisfied that the Proposed Development would meet the requirements of paragraphs 5.60 and 5.251 of the ANPS [ER 3.18.335].

Compensation Policies – Outdoor noise

527. Chapter 16 of the ES assessed effects on outdoor spaces as part of its community noise assessment. The Secretary of State notes that no significant effects on community spaces (including private gardens) were identified. However, community areas that would experience an adverse likely significant effect due to noise were identified in Table 16.39, Table 16.46 and Table 16.53 of REP9-011 and in Table 16.56, ES Table 16.63, ES Table 16.68 of REP0-011 due to ground noise increases [ER 3.18.337].

528. The Secretary of State has had regard to the Applicant's position that Compensation Policies are the final step in the mitigation hierarchy having mitigated noise at sources and by embedded mitigation [ER 3.18.337] and agrees with the ExA that the Applicant has demonstrated this in line with the balanced approach and that this is consistent with the OANPS requirement "*to mitigate as much as is practicable and realistic to do so*" [ER 3.18.338]. The Secretary of State notes that the Applicant confirmed that suitable ventilation would be provided as part of the noise insulation offer, if required to allow windows to be kept closed against noise in Summer [ER 3.18.336 - 3.18.337]. Like the ExA, the Secretary of State is satisfied that this would address concerns for residents indoors living closer to the airport. However, that it would not address noise on flight paths at greater distance from the airport [ER 3.18.338].

529. The Secretary of State notes that no additional measures were identified in the Compensation Policies to address the impact of outdoor noise on amenity, including for community areas. [ER 3.18.339]. The ExA concluded that as the permanent outdoor noise effects would impact on the quality of life for residents and would be inconsistent with policy aims to improve environmental conditions, this attracted great weight against making the Order [ER 3.18.339]. In the Consultation letter dated 2 August 2024, the Applicant was invited to set out what, if any, further measures it considered could be brought forward. In its response dated 19 August 2024, the Applicant confirmed that it did not consider either that further measures were necessary, and in any event, did not consider that there are any further practicable measures that would address the impact of outdoor noise on amenity, including for community areas.

530. Although recognising that there are no specific statutory legal protections for outdoor noise the ExA considered that the permanent outdoor noise effects would impact on quality of life for residents and would be inconsistent with the aims of NPPF (paragraph 180e) to improve local environmental conditions or LLP6(vii) to result in “*significant diminution and betterment* of the effects on airport operations on amenity of local residents”. The ExA concluded that attracted great weight against making the Order [ER 3.18.339]. The Secretary of State agrees with this conclusion.

Compensation Policies - testing

531. The Secretary of State has had regard to the representations that suggested post-installation testing should be carried out to ensure that noise insulation achieved appropriate internal noise levels [ER 3.18.340] and notes the provision made for testing within the Compensation Policies [ER 3.18.341]. The ExA considered that although the details of the testing were high level and remained to be finalised through consultation with the NISC, the Applicant’s commitment to develop a rolling testing policy in accordance with the BS EN ISO 16283-3 ‘Acoustics – field measurement of sound insulation in buildings and of building elements’ was an appropriate basis for implementing a testing regime [ER 3.18.343]. The Secretary of State agrees.

532. Although the Secretary of State has had regard to the representations which stated that the noise insulation tests should be performed by an independent body, she agrees with the ExA that there is no specific policy requirement for this. The ExA concluded that the Applicant’s approach to testing set out in the Compensation Policies was consistent with the requirements in ANPS (paragraphs 2.251 to 2.253) to demonstrate how measures would be delivered and administered [ER 3.18.343]. The Secretary of State concurs.

Compensation Policies - Park Homes

533. The Secretary of State has had regard to the queries raised by LADACAN who questioned whether mitigation was possible for all building types present within the contours of eligibility, such as Park Homes, and whether the effect of the assessment criteria meant that less substantial properties may experience higher noise levels [ER 3.18.344] together with the Applicant’s response which confirmed that no adverse likely significant effects on health and quality of life due to exposure above SOAEL had been identified as no Park Homes were within the SOAEL contour and that assessment criteria was based on external levels and therefore not affected by the construction of individual properties [ER 3.18.345]. Like the ExA, the Secretary of State recognises the importance of ensuring that mitigation measures are available for eligible properties. However, in view of the Applicant’s response, agrees that the measures are consistent with the requirement to mitigate and minimise effects in accordance with the requirements of the ANPS, NPPF, NPSE and LLP6 and LLP38 [ER 3.18.346].

Compensation Policies – Listed Buildings

534. The Secretary of State is aware of the issues raised with regard to listed buildings which included the level of payment for the current scheme, the lack of suitable timber double glazing products and the lack of a time limit to provide noise insulation for the listed properties [ER 3.18.348]. The Secretary of State notes that the Applicant stated that eligible properties would be visited by an assessor to agree what works could and should be undertaken and that an enhanced contribution of £2,500 would be provided to support applications for listed building consent and a range of products suitable for listed buildings would be provided [ER 3.18.349]. Taking into

account the enhanced contribution and the consenting costs for listed buildings in the Compensation Policies and the improved offer in terms of suitable products [ER 3.18.350], the ExA was satisfied that the Compensation Policies included appropriate criteria in respect of Listed Buildings and were consistent with the requirements of the ANPS (paragraph 5.251). The Secretary of State agrees. In reaching this conclusion the Secretary of State is mindful that the Hertfordshire Host Authority and Luton Borough Council agreed with the appropriateness of the noise insulation scheme in principle. Like the ExA, the Secretary of State cannot comment on existing insulation arrangements [ER 3.18.350].

Compensation Policies – administration and other matters

535. The Secretary of State notes the comments made with regard to the administration and enforcement of the Compensation Policies [ER 3.18.351], together with the consideration given to this matter by the ExA. The ExA concluded that the Applicant had set out its proposals for administering compensation [REP11-025] which are secured by a legally binding section 106 agreement and considered that this complied with ANPS paragraph 5.253 [ER 3.18.358]. The Secretary of State agrees. The Secretary of State notes the information provided by the Applicant on funding during the Examination [ER 3.18.354] and during public consultations and concurs with the ExA that ANPS paragraph 5.252 has therefore been complied with [ER 3.18.359].

536. The Secretary of State notes the comments regarding the functions and terms of reference of the Noise Insulation Sub-committee (“NISC”) as summarised at ER 3.18.351, together with the Applicant’s response [ER 3.18.353]. The terms of reference for the NISC were considered by the ExA who considered that they included representation from local authority Environmental Scrutiny Group members and would provide a reasonable basis for governance, when combined with the proposed delivery programme Requirement considered above [ER 3.18.360]. The Secretary of State has no reason to disagree.

537. While the Secretary of State notes that discussion regarding the compensation policies was ongoing with Interested Parties at the close of Examination, she recognises that the Joint Host Authorities accepted the noise insulation scheme was appropriate in principle [ER 3.18.361]. The ExA concluded that the approach to administration, securing and enforcement of the Compensation Policies were consistent with the requirements of the ANPS when taken in combination with the proposed delivery programme requirement above [ER 3.18.362]. The Secretary of State agrees.

Compensation Policies – overall conclusions

538. The Secretary of State has had regard to paragraphs 5.239 and 5.240 of the ANPS and recognises that airport expansion will have negative impacts on local communities and that an appropriate community compensation package is expected. Like the ExA, the Secretary of State considers that the Compensation Policies are substantially enhanced compared with the current policy and would serve to mitigate impacts on receptors in private and public buildings [ER 3.18.363].

539. The ANPS (paragraphs 5.251 to 5.253) set out the requirements for decision making in respect of compensation. The ExA concluded that the Compensation Policies set out eligibility criteria, go beyond the statutory minimum requirements for mitigation and secured a four-year noise insulation delivery programme for the worst

affected receptors [ER 3.18.364]. Accordingly, it considered the Compensation Policies to be consistent with the requirements of the APF, MBU, OANPS, NPPF, NPSNN and local policy including LLP Policy LLP6(B) and LLP38, NHLP Policy D3, CBLP policy CC8, Stevenage Borough LP saved policy SP11, VALP Policy NE5 and Hertfordshire Local Transport Plan (LTP4) environment policy 21 as they serve to limit aviation noise through mitigation [ER 3.18.365]. The Secretary of State agrees.

540. The ExA considered that the Compensation Policies were unable to address the impact of the permanent outdoor noise effects and found this to be contrary to the NPPF (paragraph 180e) aim to “*wherever possible, help to improve local environmental conditions*”, paragraph 191a which seeks to “*avoid noise giving rise to significant impacts on health and quality of life*” and LLP6(vii) which looks for proposals that “*result in a significant diminution and betterment of the effects of aircraft operations on the amenity of local residents*”. Accordingly, while recognising that there are no specific statutory legal protections for outdoor noise, the ExA accorded permanent outdoor noise effects great negative weight against the Order [ER 3.18.366]. The issue of the effects of external noise on the local community and the extent of the policy matters on this point are matters that weighs heavily with the Secretary of State and is the basis on which she agrees with the conclusion of the ExA. In reaching this view, the Secretary of State has taken into account that the Applicant has sought to demonstrate that the mitigation hierarchy approach had been applied to help reduce and minimise noise at source. While she accepts that this is consistent with the OANPS requirement to mitigate noise “*as much as is practicable and realistic to do so*” the Secretary of State is nonetheless concerned about the effects of external noise that are likely to remain and have an adverse effect on the local community [ER 3.18.338].

Public Sector Equality Duty

541. The Secretary of State has had regard to the public-sector equality duty and the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic or persons who do not. The Secretary of State notes that the Applicant’s Equality Impact Assessment identified differential and disproportionate adverse effects for people with protected characteristics including for children under 16, pregnant individuals, black and minority ethnic groups and older people (aged 65 and over) due to traffic and air noise effects [ER 3.18.368]. In addition, the ExA also identified the potential for overflights to affect groups at worship or funerals, including at Breachwood Green Baptist Church [ER 3.18.370].

542. In reaching its conclusion, the Secretary of State notes that the ExA had regard to representations including those from Alison Mitchell [ER 3.18.368] and recognised that the demographic make-up of the area surrounding London Luton Airport means that aviation noise from the Proposed Development had the potential to disproportionately affect particular groups. The Applicant’s proposed mitigation for the effects identified is set out in section 10 of the Equality Impact Assessment [ER 3.18.369]. The ExA concluded that it was satisfied with the Applicant’s conclusions and with the proposed mitigation measures [ER 3.18.370], that it had not identified a need for additional mitigation measures in respect of protected characteristics groups (as mitigation would be broadly similar to measures for the wider population) and that impacts on outdoor religious activities were not capable of further mitigation [ER 3.18.371]. The Secretary of State agrees.

Other Matters

543. The Secretary of State notes that in reaching its conclusion, the ExA took into account additional matters raised by local residents as summarised at ER 3.18.372. However, the ExA did not consider that these matters would alter its conclusions on the main issues [ER 3.18.372]. The Secretary of State concurs.

The Secretary of State's Conclusions on Noise and Vibration

544. The Secretary of State notes the consideration given by the ExA to the requirements of MBU, APF, NPSNN, ANPS and OANPS as necessitated by Policy LLP6(B)(ii) and agrees with its conclusion that the Applicant's assessment meets the requirements for an assessment of future noise and vibration effects, including from construction, operation and surface access [ER 3.18.374]. Further, she agrees with the ExA that the Applicant has satisfied the requirements of NPPF (paragraph 180), NPSNN (paragraph 4.55) and ANPS (paragraph 4.58) on the basis that the ES does not predict UAEL from noise and vibration and no substantive evidence has been provided to draw an alternative conclusion. The Secretary of State is satisfied that this is consistent with the requirements of national policy [ER 3.18.375].

545. The Secretary of State has had regard to the ExA's overall conclusions in relation to noise and vibration as set out at ER 3.18.377-400 and agrees with the ExA's reasoning and conclusions. The ExA concluded that, overall, the Proposed Development was only partially compliant with the requirements of relevant national policy, LLP6 and other local policy [ER 3.18.401]. The Secretary of State concurs and has set out her reasoning for arriving at this conclusion in the above sections.

546. The Secretary of State recognises that in the first four years after serving article 44(1) notice, receptors could be subject to unmitigated noise effects, resulting in significant adverse effects on health and quality of life in conflict with national policy. Following the rollout of compensatory noise insulation, the Secretary of State notes that effects could be reduced to not significant, particularly during the night-time. However, effects relating to outdoor noise relative to the Do-Minimum scenario would remain (albeit potentially less than in certain 2019 baseline scenarios) for which no mitigation is possible. Overall, the ExA concluded that the harm arising from noise and vibration effects attracted great weight against the making of the Order [ER 3.18.401]. The Secretary of State agrees with this conclusion. The Secretary of State considers whether the harm from aviation noise is offset by the economic and consumer benefits in the planning balance section of this letter.

Human Rights

547. Various Interested Parties made representations regarding Human Rights issues in connection with noise as summarised at ER 3.18.402-3. While the Applicant stated that Human Rights had been considered in its Statement of Reasons and that no material human rights issues had been raised during the Examination, the ExA considered that this related to Compulsory Acquisition matters rather than noise [ER 3.18.404] and found it necessary to consider the noise that would occur if development consent were to be granted and whether this engaged Article 1 of the First Protocol in Schedule 1 to the Human Rights Act 1998 and Article 8 in Schedule 1 to the Human Rights Act 1998 [ER 3.18.405]. The Secretary of State agree with the ExA's reasoning and conclusion with regard to the application of Article 1 of the First Protocol at ER

3.18.405 that while aircraft noise is intrusive in nature, its character is not such as to engage Article 1 of the First Protocol [ER 3.18.406].

548. While the Secretary of State recognises that aircraft noise has the potential to engage Article 8 in Schedule 1 to the Human Rights Act 1998 [ER 3.18.407], she agrees with the ExA that it is necessary to assess whether the interference with the rights of individuals is for a legitimate purpose - in this case the wider public interest, which includes the assessment of the need for the airport and its predicted socio-economic benefits [ER 3.18.408]. The Secretary of State's conclusion on Human Rights issues is contained in the Human Rights section of this letter.

Socio-Economic Matters

549. The Secretary of State notes the Applicant's main assessment of socio-economic matters as set out at Chapter 11 of the ES and as summarised by the ExA at ER 3.19.9 – 3.19.14. Like the ExA, the Secretary of State recognises that there is a significant overlap between need and socio-economic matters and notes that the ExA's conclusions are based on what the ExA has read and heard as a whole in relation to these matters [ER 3.19.3].

Conclusions on Socio-economic Matters

550. The ExA found no reason to disagree with the assertion that Luton experiences levels of unemployment above the regional and national average with parts of the borough falling within the top 10 to 30% of the most deprived areas in England, or that London Luton Airport is a major employer within Luton and the wider area with approximately 12% of jobs in Luton being directly associated with the airport [ER 3.19.30]. The Secretary of State is likewise content.

Job Creation

551. The Secretary of State agrees with the ExA that the Proposed Development would result in job creation and recognises the difficulty in determining the number of jobs that would be created, particularly due to the uncertainty surrounding the long-term implications of the COVID-19 pandemic on the travel industry [ER 3.19.31]. The Applicant's employment projections are set out at ER 3.19.10, and the Secretary of State has had regard to the representations made by various Interested Parties including the New Economics Foundation who considered that the job impacts that would arise from the Proposed Development were overstated [ER 3.19.23]. The Secretary of State notes the consideration given by the ExA regarding how much reliance could be placed on the Applicant's employment projections by looking at the differences between the levels of employment created by the 2012 permission which expanded the airport from 9.5mppa to 18mppa and what was proposed. While the Applicant advised that the methodological differences used to generate the employment estimates for the 2012 consent and the Proposed Development meant it was difficult to compare the two estimates but conceded that the 2012 baseline data may have overstated employment related to the operation of the London Luton Airport by approximately 5%. The Applicant stated that if the figures were reworked it would suggest that employment growth had been towards the lower end of the range originally estimated but that it had nonetheless been significant with some 3,000 additional jobs created as the airport grew to 18mppa [ER 3.19.32]. Like the ExA, the Secretary of State agrees that the predicted employment figures should be approached with a degree of caution but is satisfied that even if a lower number of

jobs was delivered than the amount proposed, the Proposed Development would still deliver a significant number of new jobs [ER 3.19.33].

Levelling-up through Job creation

552. The Secretary of State notes that the Applicant considered that the expansion of London Luton Airport could play a part in levelling-up which the ExA understood to be on the premise that the delivery of jobs and training opportunities for the residents of Luton would act as a catalyst to enable levelling up [ER 3.19.34], and notes the factors set out at ER 3.19.35 in support of this contention. The ExA concluded that job creation when considered in the existing context of Luton and coupled with the increased Gross Value Added could provide meaningful benefits for the local economy, with the ripple effects of increased passenger spending contributing to a boost in economic vitality in the area [ER 3.19.36]. The Secretary of State concurs.

Job Quality

553. The Secretary of State has had regard to the concerns raised by Interested Parties who considered that the type of jobs created by the Proposed Development would be low paid, low skilled and potentially short term and subject to automation in the future [ER 3.19.37]. However, she agrees with the ExA that while some of the direct jobs may be entry level, they could still provide immediate opportunities for those who are currently unemployed and living in the local area. Furthermore, she notes that in the medium to long term, the Employment and Training Strategy would engage with existing education institutions and local training providers to improve the local skill base to help people access higher skilled and better paid jobs and this would also help support existing workers with upskilling and career advancement [ER 3.19.37 – 3.19.38]. As such, and like the ExA, the Secretary of State is satisfied that the Proposed Development would provide jobs at a variety of levels with measures in place to enable opportunities for upskilling and progression of both the existing and future workforce [ER 3.19.39].

Overdependence on the airport

554. While the Secretary of State recognises that overdependence on focusing investment on one industry is a cause for concern [ER 3.19.40], she agrees with the ExA that it would be counter-productive and short-sighted to limit investment in the airport with the expectation that other sectors would immediately compensate for any shortfall. Further, the Secretary of State agrees with the ExA that it is neither within the Applicant's control, nor is it its responsibility to encourage the growth of other businesses in the area [ER 3.19.41].

Effects on Tourism

555. The Secretary of State notes the consideration given by the ExA regarding whether the Proposed Development would adversely affect domestic tourism. Based on the evidence, the ExA accepted that if London Luton Airport was not expanded, most of the additional future passengers would seek to use alternative airports rather than choosing to holiday in the UK [ER 3.19.42]. Like the ExA, the Secretary of State is satisfied that the Proposed Development would not adversely affect domestic tourism and notes that such a view is consistent with the conclusions reached regarding expansion at Bristol Airport and at the P19 permission Luton [ER 3.19.43].

Displacement

556. The Secretary of State agrees with the ExA that how passengers decide which airport to fly from is complex and dependent on many factors. While the Secretary of State notes that that some displacement may potentially occur due to passengers deciding to spend in other sectors rather than on flights if additional capacity is not made available at Luton, she notes that this argument is not supported by any substantive evidence. Furthermore, the Secretary of State shares the ExA's view that current policy recognises the constraints on airport capacity in the south east and so encourages making best use of existing runways as a means to address this. Therefore, she agrees with the ExA that any potential for displacement of passengers does not weigh against the Proposed Development [ER 3.19.44 - 3.19.45].

Community First Fund

557. The Secretary of State notes that the Applicant considers that London Luton Airport is a community airport and as such has demonstrated its commitment to ensuring that the benefits from its ownership of London Luton are shared with nearby communities. To do this the Applicant has proposed the creation of a Community First Fund which is a social fund aimed at providing grant funding to local organisations to address LBC's vision objectives of tackling deprivation and achieving carbon neutrality by 2040 [ER 3.19.13]. Like the ExA, while the Secretary of State recognises the reasons for the proposed sharing of benefits, she agrees that the grant funding of schemes to tackle deprivation would not meet the NPPF test (as set out in paragraph 57) for planning obligations because it is unclear how such funding would be directly related to the impacts of the expansion of London Luton Airport. The Secretary of State is, however, satisfied that the funding of projects to help achieve carbon neutrality by 2040 would meet the NPPF test [ER 3.19.46]. The ExA concluded that although it is commendable that the Applicant wishes to share the benefits of the Proposed Development with the wider community through the Community First Fund, it did not consider that it could attribute any weight to the funding of the schemes to tackle deprivation [ER 3.19.47]. The Secretary of State concurs.

Other Matters

558. The Secretary of State has had regard to Buckinghamshire Council's concerns that the lack of public transport links would act as a potential barrier to its residents being able to benefit from employment opportunities at the airport. The Secretary of State notes that the Bus and Coach Study, which would be used to inform future travel plans, includes a number of specific bus services including extending the 61X to Aylesbury on an hourly basis, and that the inclusion of services in future travel plans could be raised by the Airport Transport Forum Steering Group of which Buckinghamshire Council is already a member. Like the ExA, the Secretary of State is satisfied that a lack of public transport would not act as a barrier to the residents outside of Luton being able to access employment opportunities at the airport [ER 3.19.48].

559. The Secretary of State notes the concerns raised by Buckinghamshire Council regarding the fact that ten Buckinghamshire priority wards were not included in the Employment and Training Strategy [ER 3.19.26]. The Secretary of State agrees with the ExA that it would have been preferable for these to be included in the Employment and Training Strategy. However, she is satisfied that Buckinghamshire Council would be involved with the implementation of the Employment and Training Strategy and

therefore could ensure that opportunities for its residents would be maximised as part of that process [ER 3.19.49].

560. The Secretary of State has had regard to the concerns raised by North Hertfordshire District Council regarding the potential inverse effect the Proposed Development could have on its local economy due to people avoiding the towns in the areas as a result of traffic congestion and delays [ER 3.19.27]. However, given that no substantive evidence has been put forward to suggest that increased traffic would deter visitors to North Hertfordshire and even if it did, that this would result in a detrimental impact to its economy. The Secretary of State agrees with the ExA that this concern carries little weight when assessing the socio-economic effects of the Proposed Development [ER 3.19.50].

The Secretary of State's Overall Conclusion on Socio-Economic Matters

561. Like the ExA, the Secretary of State accepts that the Proposed Development would deliver a number of economic benefits including through the provision of increased employment opportunities and contributions to Gross Value Added and GDP [ER 3.19.51]. While the Secretary of State recognises that there is uncertainty regarding the accuracy of the number of jobs that the Proposed Development would create, she agrees with the ExA that even at the lowest levels predicted, it would provide a significant number of jobs in an area which has high levels of unemployment and deprivation. These jobs would be at a variety of levels, which through the measures in the Employment and Training Strategy would enable the upskilling and progression of both the existing and future workforce, including those with protected characteristics under the Equality Act 2010 which she considers is a further beneficial differential effect [ER 3.19.52].

562. Overall, the Secretary of State agrees with the ExA that the Proposed Development would accord with the Luton Local Plan Policies LLP 6 and LLP13, similar socio-economic policies contained within the other relevant development plans, the APF, ANPS, FttF, JZS, BBB and the NPPF, other relevant development plans, and national policy documents. Accordingly, the Secretary of State agrees with the ExA that the socio-economic benefits would be positive and would carry great weight in favour of the Proposed Development [ER 3.19.53].

Traffic and Transport

563. The Secretary of State notes that Chapter 13 of the Applicant's ES assessed the likely significant effects of the construction and operation of the Proposed Development from traffic and transport [ER 3.20.9], and that this assessment included the impact on users (both motorised and non-motorised) of the transport network [ER 3.20.10]. The Secretary of State has taken account of the issues considered by the ExA during the Examination as set out at ER 3.20.29 – 3.20.30 and considers each of these matters in turn below.

Transport Modelling

564. In response to a request by the ExA that the Applicant review its transport modelling following advice produced by DfT regarding the treatment of the COVID-19 pandemic in transport modelling [ER 3.20.31], the Applicant submitted the 'Accounting for COVID-19 in Transport Modelling Final Report'. This report concluded that the proposed highway mitigation measures for the airport expansion could be considered

robust and remained effective even with the updated modelling assumptions. The report considered that the modelling demonstrated that the impacts of the Proposed Development would not significantly adversely affect the operation of the highway network in the local or wider area [ER 3.20.32].

565. At the close of the Examination, the Secretary of State notes that with the exception of the Hertfordshire Host Authorities, who lacked confidence in the traffic modelling and the potential impacts on traffic flow in Hertfordshire, the other relevant highway authorities had no outstanding concerns with the final report [ER 3.20.33]. The Hertfordshire Host Authorities accepted that there was insufficient time in the Examination process for the Applicant to re-run traffic models but requested additional post-decision monitoring sites to ensure any potential impacts on traffic flows in Hertfordshire were identified. The Applicant did not initially consider it necessary to include the additional locations identified but entered into discussion with the Authorities [ER 3.20.34]. It was noted by the ExA that no side agreement had been seen and that the Statement of Common Ground between the Hertfordshire Host Authorities and the Applicant stated that these issues remained outstanding at the close of the Examination [ER 3.20.59]. The Secretary of State has sought an update on this which is discussed below. The Secretary of State considers that, having regard to this point, the traffic modelling undertaken was adequate to allow proper consideration of the traffic impacts.

566. The ExA requested the Applicant produce Trip Distribution Plans to consolidate and simplify the information relating to traffic. The Secretary of State has had regard to these Plans which were submitted at Deadline 1 and which were reviewed and updated throughout Examination [ER 3.20.35]. The Secretary of State has also taken note of a number of transport infrastructure assumptions made by the Applicant which were explored during Examination and summarised at ER 3.20.36. The Secretary of State considers the Applicant's responses to the transport infrastructure assumptions to be satisfactory in each case and like the ExA, is content that the transport modelling was undertaken in accordance with all relevant policy and guidance and was informed by ongoing engagement throughout the Examination [ER 3.20.37].

567. Overall, the Secretary of State agrees with the ExA that the matters relating to modelling weigh neutrally in the planning balance [ER 3.20.164].

Traffic

568. The Secretary of State has noted that a number of parties raised concerns about the increase in traffic that would be generated by the Proposed Development [ER 3.20.38].

569. The Applicant proposed that surface access was one of the four environmental topics to be controlled by the GCG Framework [ER 3.20.39], and that the GCG Framework sought to ensure that the reasonable worst case mode share assumptions that underpin the transport assessment and ES would not be exceeded. The limits included within the GCG Framework are therefore the proposed measures controlling the maximum amount of additional traffic that could be generated by the Proposed Development. Any exceedance of these limits would result in more traffic on the network than was assessed in the ES [ER 3.20.40]. The GCG Framework for surface access comprises Thresholds and Limits in relation to the percentage mode shares for 'non-sustainable' (use of private car or taxi) travel for both air passengers and airport staff [ER 3.20.41].

570. Several parties including Transport for London, the Hertfordshire Host Authorities, and National Highways raised concerns regarding the surface access aspects of GCG Framework, referencing concern over the level of the targets set and how they had been determined and how the GCG Framework would work in practice [ER 3.20.42]. In particular, Transport for London stated that the Proposed Development should not be dependent on any increase in car trips or car parking and referred to the ANPS [ER 3.20.45] which states that Heathrow Airport needed to ensure its landside airport-related traffic is no greater than it is today. The Applicant stated that there was no obligation on airport developments to result in no net increase in traffic as with Heathrow, only that identified impacts are mitigated. The Applicant pointed to the Surface Access Strategy and Framework Travel Plan as securing its mitigation, noting the measures set out to increase sustainable travel mode share at the airport for both passengers and staff and these measures will reduce the number of vehicles travelling to the airport [ER 3.20.46]. The Secretary of State notes the ExA was concerned about how the staff mode share targets had been determined, which appeared low when considered against the proximity of the Airport to residential areas [ER 3.20.43].

571. The ExA questioned what mode share targets would be required to achieve a reduction in the number of vehicles travelling to the airport. In response, the Applicant confirmed that the mode share assumptions included in the Transport Assessment would need to be significantly increased [ER 3.20.47] and while the Applicant stated it was keen to promote sustainable travel to and from the Airport as far as practicable, it concluded that the possible mode share outlined in the Public Transport Strategy – Summary Report to reduce the generated vehicles for passengers and staff would be unachievable [ER 3.20.48]. The Hertfordshire Host Authorities raised concerns that the GCG mode share percentages could be masking a serious increase in traffic on the surrounding network. The Applicant responded that the GCG Framework sought to control mode share at a high level and that highway mitigations at specific locations would be controlled via the Transport Related Impacts Monitoring and Mitigation Approach (“TRIMMA”) [ER 3.20.49]. The Applicant acknowledged the potential for residual traffic related impacts and had created the TRIMMA process to address this [ER 3.20.71]

572. Like the ExA, the Secretary of State recognises that it would be the Travel Plan which would ultimately control the future mode share, with the GCG Framework acting as a backstop, preventing further growth at the Airport should the worst case mode share limits, relied upon in the ES, be exceeded [ER 3.20.66]. That said, the Secretary of State has noted that figures provided during the Examination show the Airport is already exceeding the proposed Phase 1 GCG Framework Limits for surface access with the non-sustainable transport usage figures exceeding the GCG Framework limits by 3% for passengers and 6% for staff. Although the Applicant expects public transport usage to return to pre-COVID 19 levels and as such considered that the mode share limits would be achievable, the Applicant acknowledged that if the mode share remains outside the GCG Framework limits, the Airport would not be able to grow [ER 3.20.67].

573. Requirement 21 secures the monitoring of the GCG Framework and in relation to the proposed monitoring for surface access, would comprise an annual staff travel survey and collecting data from the CAA annual departing passengers survey [ER 3.2.68] The Secretary of State shares the ExA’s concerns that the delay in starting the monitoring of the GCG Framework, as secured by requirement 21 of the Draft Order,

could potentially result in a breach of GCG Framework Limits not being identified for a considerable period after notice was given that the airport intended to grow. The ExA were concerned that the airport was already exceeding its proposed Phase 1 GCG Framework Limits for passengers and staff and the ExA were not provided with sufficient evidence to demonstrate that levels could be reduced sufficiently. The ExA therefore proposed amending requirement 21 in respect of surface access, to secure the provision of a Monitoring Report *prior* to the notice under article 44(1) being served. The Secretary of State agrees with the proposed amendment and can see how this early monitoring would help the Applicant identify trends in the surface access mode share and only serve notice when it was confident that the Phase 1 limits would not be breached. The Secretary of State agrees with the ExA that this would not be an onerous requirement and would assist in preventing a materially worse impact arising than assessed in the ES [ER 3.20.69].

574. While the ExA noted that there is no requirement to prevent an increase in airport related traffic it considered that the Proposed Development would increase traffic substantially [ER 3.20.70]. The Secretary of State has had regard to the requirements of the NPPF which states “Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe” and notes that although the modelling suggests that there would be no significant adverse effects to either the Local Road Network or the Strategic Road Network, she agrees with the ExA that the amount of extra traffic the Proposed Development would generate is considerable. She notes the ExA were also concerned regarding the potential for rat running on rural roads due to the increase in traffic and that appropriate monitoring was not in place to identify and subsequently mitigate the impacts. While the ExA notes that the TRIMMA process was designed to address this, it also noted that this only included monitoring at the locations of the proposed off-site highway works. Monitoring at other locations on the Local Road Network and Strategic Road Network would need to be undertaken by the relevant highways authority and the onus would be on them to demonstrate that any issue identified was airport related. The ExA considers that these residual impacts on the road network, when considered cumulatively, could be severe and that this weighs greatly against the making of the Order [ER 3.20.71]. As set out in the Secretary of State’s conclusions below, the Secretary of State is aware of an agreement being reached providing for additional monitoring in Hertfordshire and, subject to confirmation that the agreement is in place, takes the view that this additional monitoring should help to reduce the cumulative effects on the road network, so that this impact could be considered as having a moderate adverse effect.

Transport Related Impacts Monitoring and Mitigation Approach

575. The Secretary of State notes that the outline TRIMMA sets out a proposed strategy for monitoring the impact of traffic from the Proposed Development, agreeing the need for and the form of mitigation and agreeing for residual traffic related impacts to be funded by the Sustainable Transport Fund [ER 3.20.51]. National Highways and the Hertfordshire Host Authorities raised concerns in relation to the outline TRIMMA, stating that it lacked detail. During the Examination this document was updated and was secured as a standalone document under requirement 30 of the draft Order (that requirement being re-numbered 34 in the ExA recommended DCO) [ER 3.20.50].

576. Following concerns from the local highway authorities that the outline TRIMMA stipulated that it would be their responsibility to fund any additional monitoring to demonstrate locations for consideration of residual impact works [ER 3.20.53], the Applicant amended the final version of the outline TRIMMA to include a section on ‘fly-parking’ and controlled parking zones and stated that any costs incurred by local highway authorities in relation to evidencing the need for residual impact works would be reimbursed as secured by the ‘offsite highway works’ requirement of the draft Order [ER 3.20.54]. The Secretary of State agrees with the ExA that the final TRIMMA, which needs to be substantially in accordance with the outline TRIMMA, is an appropriate mechanism to identify and monitor traffic related effects from the Proposed Development in so far as they apply to the locations of the offsite highway works [ER 3.20.55].

Traffic Calming in Hertfordshire

577. The Secretary of State notes that over 30 relevant representations raised specific concerns about airport related traffic using smaller local roads to access London Luton Airport. The Hertfordshire Host Authorities noted that the Transport Assessment indicated locations of potential traffic calming measures which could mitigate the ‘rat-running’ issue but supplied no further detail. The Applicant stated the locations of the indicative traffic calming measures to help dissuade airport related traffic from reaching villages and that it would be willing to work with local authorities in delivering highway mitigation and local traffic calming schemes, subject to ongoing monitoring. None of the traffic calming was proposed to be constructed as part of the Proposed Development [ER 3.20.56]. The ExA queried why traffic calming measures had not been included in the proposed off-site highway mitigation works. The Applicant explained that the transport modelling showed small but not necessarily significant increases in traffic flows in rural areas closest to the Proposed Development and therefore proposed to monitor these locations rather than provide mitigation [ER 3.20.57].

578. In relation to monitoring, the Secretary of State notes that the outline TRIMMA only included areas of monitoring by the Applicant in the locations of the proposed off-site highway mitigation works and did not include the locations that were of concern to the Hertfordshire Host Authorities [ER 3.20.58]. At the close of the Examination, the Applicant proposed a side agreement with the Hertfordshire Host Authorities to cover additional monitoring areas, but this was not provided to the ExA [ER 3.20.59]. The ExA concluded that there was potential for ‘rat-running’ on rural roads from an increase in traffic and agreed with the Hertfordshire Host Authorities that suitable monitoring should be provided and recommended that the Secretary of State may wish to check that an appropriate side agreement was in place [ER 3.20.62]. In her information request dated 2 August 2024, the Secretary of State invited both the Applicant and the Hertfordshire Host Authorities to confirm whether a side agreement for the monitoring of traffic in rural locations in Hertfordshire had been reached. In its response dated 11 October 2024, Hertfordshire County Council confirmed that an agreement had been reached as confirmed by the Applicant in its response of the same date. Like the ExA, the Secretary of State considers that the provision of additional monitoring would allow the Applicant to identify and subsequently minimise, any local impacts of airport-related traffic, demonstrating compliance with paragraph 5.11 of the APF [ER 3.20.61]. The ExA concluded that without an appropriate side agreement in place this matter would weigh greatly against the making of the Order [ER 3.20.62]. As an agreement

has now been reached, the Secretary of State considers that this matter this should weigh neither for nor against the making of the Order.

Ivinghoe Junction

579. The Secretary of State has had regard to Buckinghamshire Council's concerns about the impact of the airport related traffic on the local road network and notes that it proposed that the Applicant should provide highway mitigation work to change the priority of the junction of the B488 and B489 in Ivinghoe to dissuade traffic using the B489 through the villages of Ivanhoe, Pitstone and Marsworth. Buckingham Council explained that this was in order to satisfy Policy TRA2 of the made Ivinghoe Parish Neighbourhood Plan 2014 – 2023 [ER 3.20.63].

580. In response to queries from the ExA on the modelling of this junction, the Applicant explained how the B489/B488 junction had been reviewed and concluded that, because there was only a small percentage increase in overall traffic, it did not warrant capacity improvement and any proposal to re-prioritise the junction could potentially divert traffic on to the B488 and into the Hertfordshire road network and that no consultation had been undertaken in this respect [ER 3.20.64].

581. The ExA agreed with the Applicant's conclusion noting that if deemed necessary in the future, Buckinghamshire Council could bring forward proposals for this junction through the TRIMMA. As such, the ExA concluded that this issue weighed neither for nor against the making of the Order [ER 3.20.65]. The Secretary of State agrees.

Proposed Off-Site Highway Works

582. The Secretary of State notes that the application included several off-site highway mitigation work packages to mitigate the traffic impacts of the Proposed Development [ER 3.20.72].

583. The Secretary of State notes that the initially missing Stage 1 Road Safety Audits were subsequently provided during the Examination [ER 3.20.73], and that by the end of Examination the ExA were satisfied that all proposed off-site highway works would be designed to the relevant standards set out in applicable documents, ensuring works are designed to cater for all types of users, including those with protected characteristics. Like the ExA, the Secretary of State considers that overall, the design of these works had full regard to the requirements of the Equality Act 2010 [ER 3.20.74]. The Secretary of State notes that the following off-site highway works were considered in more detail during the Examination.

A1081 New Airport Way/ Gypsy Lane Junction (Works Nos. 6e (b))

584. Following the stage 1 Road Safety Audits, Central Bedfordshire Council raised concerns regarding the proposed off-site highway mitigation works at the A1081 New Airport Way/Gypsy Lane Junction, stating it was not confident that the highway works proposed could be delivered within the Order Limits. The Applicant confirmed that no additional land was required in this respect [ER 3.20.76]. The Secretary of State notes that the ExA highlighted that the Applicant and Central Bedfordshire Council had put in place a side agreement to secure these works to the satisfaction of both parties. The ExA noted that it had not had sight of this agreement and recommended that the Secretary of State may wish to check it was in place [ER 3.20.77]. As this is a private agreement the Secretary of State has no reason to have sight of it. However, in her letter dated 2 August 2024, invited both parties to confirm it had been successfully

completed. The Secretary of State is content to rely on the responses of the Applicant and Central Bedfordshire Council, dated 19 August 2024 and 21 August 2024 respectively, confirming that the proposed highway mitigation works at this location had been agreed and signed.

Eaton Green Road/ Wigmore Lane/ Crawley Green Road (Works Nos. 6e (d, e, f, j and q))

585. The Secretary of State notes that a number of parties expressed concerns in relation to the extent and scale of the proposed off-site highway mitigation works to Eaton Green Road, Wigmore Land, and Crawley Green Road. These works comprised changing eight roundabouts and mini roundabouts to signalised junctions with associated works on a section of the local highway just over a mile in length [ER 3.20.78]. The ExA questioned the Applicant and Luton Borough Council on why the works were necessary as the Trip Distribution Plans showed there was no airport related traffic forecasted to use Wigmore Lane. In response, Luton Borough Council explained that the proposed works took account of traffic displacement and congestion that would otherwise occur on other parts of the local road network if the capacity enhancement on this section of the highway were not delivered, and noted that the final form of the mitigations could differ from the outline designed as a result of monitoring in the TRIMMA to allow for works to be scaled down. The Applicant also explained that there was an expected increase in congestion associated with committed development and background growth regardless of the airport's expansion [ER 3.20.80].

586. Following further challenge from the ExA, the Applicant provided a sensitivity test which demonstrated a decline in the performance of the local road network and showed an increase in the number of vehicles that could not enter the network due to congestion or other constraints [ER 3.20.81]. The ExA did not consider that there was sufficient evidence that demonstrated the proposed works were necessary to the scale and extent proposed solely to address the traffic impacts of the Proposed Development [ER 3.20.82] and considered that if the proposed off-site highway mitigation for this area was to remain in the Order, then more stringent controls would be required. Accordingly, the ExA inserted a new Requirement into the Order and with this inclusion was satisfied that the scale and extent of works undertaken in this area would be proportionate and appropriate to mitigate the impacts from airport related traffic. The ExA concluded that with this requirement in place, this matter weighs neutrally in the planning balance. [ER 3.20.83]. The Secretary of State concurs.

Eaton Green Road Link (Part of Works No. 6a (2))

587. Regarding the proposed off-site highway mitigation works at the Eaton Green Link Road, the Secretary of State notes that over 20 relevant representations raised concerns that the works would fail to comply with Luton Local Plan Policy 6D(i) (as detailed at ER 3.20.85) if constructed, as it would allow traffic to access the airport from Eaton Green Road [ER 3.20.84]. In response to the ExA's queries on this point, the Applicant noted that the Eaton Green Road Link was already consented as part of the New Century Park planning permission [ER 3.20.86], and Luton Borough Council confirmed Local Plan Policy 6D(i) was specific to Century Park [ER 3.20.87]. The ExA was satisfied that Policy 6D(i) did not apply directly to the Proposed Development [ER 3.20.88]. The Secretary of State agrees.

Hitchin Junctions (Works Nos. 6e (i, k and m))

588. The Secretary of State notes that a number of Interested Parties expressed concerns in relation to the proposed off-site highway mitigation works in Hitchin, with the Hertfordshire Host Authorities specifically concerned that the design of the proposed works did not appear to consider vertical buildability, and the proposed mitigation did not sufficiently address the airport related traffic impacts. The Authorities also considered that active travel and public transport had not been sufficiently accounted for and therefore the proposed mitigation of these three junctions would not be in accordance with the Hertfordshire Local Transport Plan 4 [ER 3.20.89].

589. When questioned by the ExA, the Applicant provided junction performance data which it considered demonstrated that the impacts of the Proposed Development would be mitigated [ER 3.20.90], confirming that the mitigation proposals did not preclude other measures from being implemented and stated that through the TRIMMA process, existing proposals could be modified through engagement with the Hertfordshire Host Authorities, [ER 3.20.92]. The Secretary of State notes that the Hertfordshire Host Authorities confirmed that they were content with the alternative junction layouts presented to them by the Applicant as being more consistent with the Hertfordshire Local Transport Plan 4 and were content for these to form the basis of a side agreement. The ExA noted there was no side agreement in place at the close of Examination [ER 3.20.93]. The ExA shared the concerns of the Hertfordshire Host Authorities regarding the proposed mitigation and considered that suitable amendments were needed to the three Hitchin junctions and recommended that the Secretary of State check that an appropriate side agreement is in place to address this [ER 3.20.94].

590. In her further information request dated 2 August 2024, the Secretary of State invited the Applicant and Hertfordshire County Council to confirm whether an agreement had been reached with regard to the Hitchin Junctions and if not, to set out what they considered was required in order to resolve the outstanding concerns. The Secretary of State notes the Applicant's response dated 19 August 2024 which confirmed that its position remained as it was at the close of the Examination, together with the response from North Hertfordshire District Council and Hertfordshire County Council dated 19 August 2024 which stated that no evidence had been presented that would address their concerns and that the design of the junctions remained unacceptable. Given the position regarding the junction designs in Hitchin remains the same as at the close of the Examination, the Secretary of State shares the ExA's concerns that the proposed mitigation for the effects of traffic around Hitchin would not act to resolve the junction capacity constraints or improve provision for other road users and are not compliant with Local Transport Plan policy. The alternative proposals and funding for them noted by the ExA as being under discussion for inclusion in a side agreement at the close of the Examination [ER 3.20.92] are not secured and therefore cannot be given weight as mitigation. The Secretary of State considers that it has not been demonstrated that the proposed mitigation is compliant with local planning policy nor that it would be sufficient to mitigate the impacts of the Proposed Development. Accordingly, the Secretary of State agrees with the ExA's conclusion that this matter attracts great weight against the making of the Order [ER 3.20.94].

M1 J10 (Works Nos. 6e (n, o and p)

591. The Secretary of State notes that National Highways were concerned that the proposed off-site highway mitigation works at M1 J10 would not be sufficient to

mitigate the forecasted traffic impacts, and that additional works would be required [ER 3.20.95]. At the close of the Examination the Applicant and National Highways had agreed that the proposed mitigation to the M1 J10 with the addition of gantries, smart technology and maintenance bays would be sufficient to ensure safe operation. There remained to be disagreement on what further works would be required to address the impact of the Proposed Development on the Strategic Road Network as a whole [ER 3.20.96]. The Applicant revised the outline TRIMMA to include a commitment to make a financial contribution to assist National Highways in the event that it considered further works were required [ER 3.20.97].

592. The Secretary of State has had regard to the further representation received from National Highways dated 11 October 2024 in response to her further information request dated 27 September 2024 together with the updated M1 Junction 10 Intervention Assessment Report and notes that this maintains the safety concerns of the forecast unmitigated congestion to the south of M1 Junction 10 in both directions following the implementation of the second and third phases of the Proposed Development. To ensure the safe operation of the network, the Secretary of State notes that National Highways stated that they required the mitigation identified in the report attached to their submission to be secured in the Order. The Secretary of State has also taken into account the Applicant's response dated 25 November 2024.

593. While the Secretary of State understands the concerns raised by National Highways, she agrees with the Applicant and ExA that sufficient mitigation has been included in the outline TRIMMA to ensure that, if necessary, in the future, National Highways could bring forward proposals through the TRIMMA. The Secretary of State also agrees with the ExA regarding the proposed amendment to requirement 34 (as numbered in the ExA recommended DCO) which would require the submission of details of the implementation of the M1 J10 Work No. 6e (n), including timing, with the submission of the TRIMMA for approval to ensure the works are delivered as early as possible. The ExA concluded that with the amended requirement in place, this issue weighed neither for nor against the making of the Order [ER 3.20.98]. The Secretary of State agrees.

Parking

594. The Secretary of State notes that the ExA was satisfied that the traffic modelling appropriately took account of car parks as traffic destinations and that the Applicant could utilise the Sustainable Transport Fund to facilitate increased mode share if there was insufficient off-site car parking in the future [ER 3.20.108]. The Secretary of State agrees with this conclusion.

595. The Secretary of State has had regard to Luton Local Plan Policy 6C, as detailed at ER 3.20.99, and notes the ExA's consideration of the matters raised. This requires that airport related car parking proposals do not exacerbate traffic congestion or have an adverse impact on amenity. The Secretary of State agrees with the conclusion reached by the ExA that the parking proposed by the Applicant is in accordance with the LLP 6C [ER 3.20.108]

596. There were over 100 relevant representations that raised concerns regarding parking including passengers and staff parking inappropriately in residential areas, and the capacity and utilisation of the current car parking and how that compared to future capacity with the projected number of passengers and staff ER 3.20.99 - 3.20.107]

597. Following discussion regarding inappropriate parking in residential areas ('fly-parking') during the Examination, the ExA noted that the Applicant agreed to fund a consultation on new Controlled Parking Zones in Luton Borough Council's area that could be implemented and any parking controls introduced as a result would be funded by the Applicant. Luton Borough Council stated that it was the Council's policy that parking permits were funded by the permit holder. The ExA requested information from Luton Borough Council regarding whether a scheme could be implemented where the Applicant funded the parking permits and, if not, explain why not. Luton Borough Council, however, maintained a position that it was the residents who would benefit from any scheme and so it should be the residents that covered the cost of providing the parking permits [ER 3.20.106]. Aside from the fact this would require residents to pay for permits who were suffering from fly-parking, the ExA noted that they were satisfied that the outline TRIMMA contained mechanisms to address fly-parking [ER 3.20.109]. The Secretary of State agrees.

598. The Secretary of State has noted that there is currently a fly-parking issue as a result of London Luton airport, and that an increase in passenger numbers from the Proposed Development would likely make the issue worse. Even though the outline TRIMMA contains provisions to address fly-parking, the Secretary of State notes that residents would be adversely impacted because they would be expected to pay for parking permits and a permit scheme would take some time to implement. Further the Secretary of State notes that requiring local residents to pay for permits could reduce the uptake of the scheme and a delay in implementation would lead to impacts on local parking in conflict with paragraph 5.11 of the APF. The ExA concluded that this issue would attract moderate weight against the making of the order. The Secretary of State agrees [ER 3.20.110].

Sustainable Transport

599. The Secretary of State notes that a large number of parties raised concerns about the effect the Proposed Development could have on sustainable modes of transport, noting that paragraph 5.5 of the ANPS highlights the Government's commitment to maximise the number of journeys made to airports by sustainable modes as much as possible [ER 3.20.111].

Framework Travel Plan

600. The Secretary of State is aware that the Framework Travel Plan outlined the structure and approach for the future Travel Plan which would be produced to deliver the vision and objectives of the Surface Access Strategies (to encourage passengers and staff onto public transport, and to incentivise the use of low carbon vehicles to travel to the airport including the provision of EV charging points [ER 3.12.30]. The Travel Plan would stipulate the mode share targets for sustainable transport use for those travelling to and from the airport. The Framework Travel Plan would be secured by requirement 36 of the ExA recommended draft Order [ER 3.20.112]. The Secretary of State notes the updates made by the Applicant to the Framework Travel Plan in response to the concerns raised by Interested Parties, to clarify which interventions and measures were proposed to be implemented. Additionally, the Applicant also added information to the interventions and measures to indicate timescales and restrictions for implementation [ER 3.20.113].

601. The ExA considered that the GCG Framework non-sustainable mode share thresholds and limits were unambitious, particularly for staff, given the control the

Applicant has over how its staff travel to work and the proximity of residential areas to the airport, but understood the Applicant intended the mode share targets in the Travel Plan to be more ambitious than those in the GCG Framework, with five-yearly reviews to ensure mode share was regularly updated and set as high as possible to encourage the switch to sustainable modes [ER 3.20.114]. In order to secure the maximisation of the sustainable transport mode share, the ExA recommended that the travel plan requirement should be amended to ensure that non-sustainable mode shares were no higher than those in the GCG Framework and set as low as possible through agreement with the Airport Transport Forum. With the additional wording in Order, the ExA was satisfied that the Travel Plan mode share targets would be more ambitious and would maximise the use of sustainable modes of transport to comply with the ANPS [ER 3.20.115]. The Secretary of State agrees with the ExA's conclusion and that the proposed amendment to requirement 36 is appropriate and necessary.

The Airport Transport Forum

602. The Secretary of State notes that Luton Airport has an Airport Transport Forum and Buckinghamshire Council, as a highway authority, had been invited to join. In addition, Buckinghamshire Council would be part of the Airport Transport Forum Steering Group (a sub-committee of the Airport Transport Forum involved in decision making regarding surface access and administration of the Sustainable Transport Fund) [ER 3.20.116 – 3.20.117]. Like the ExA, the Secretary of State agrees that the membership of the Airport Transport Forum and the Steering Group, including Buckinghamshire Council, is appropriate [ER 3.20.118].

Sustainable Transport Fund

603. In response to the concerns raised regarding sustainable transport, the Applicant developed a 'Sustainable Transport Fund' which would be used to fund the mitigation measures in the Framework Travel Plan [ER 3.20.119]. Following questions from the ExA and consultation with local authorities, the Applicant increased the fund size from £18.5million to £37million and incorporated the additional facilities as detailed at ER 3.20.120 – 3.20.121. As a result, the relevant local authorities confirmed that their concerns had been adequately addressed [ER 3.20.121]. Like the ExA, the Secretary of State sees no reason to disagree with the local authorities and is content that the Sustainable Transport Fund is secured through requirement 37 in the ExA recommended draft Order [ER 3.20.123].

Rail

604. The Secretary of State notes that a number of parties raised specific concerns relating to the impact of the Proposed Development on rail capacity [ER 3.20.124] and the issue of rail capacity was explored during Examination as detailed at ER 3.20.125 – 3.20.129. The Secretary of State has had regard to the concerns from Network Rail which remained outstanding at Deadline 11, where they stated that some of the assumptions and calculations presented in the Rail Impacts Summary were still unclear or unknown and considered that there was a risk that the impact of the Proposed Development on Luton Airport Parkway station capacity had been underestimated and consequently posed several questions to the Applicant and requested additional data [ER 3.20.130].

605. The ExA concluded that it was vital that there was confirmation that there was sufficient capacity on the rail network to accommodate an increase in passengers that

would result from the Proposed Development and without this, the use of rail could not be relied upon to contribute towards maximisation of sustainable transport modes in line with policy [ER 3.20.176]. The ExA therefore recommended that the Secretary of State may wish to consult both the Applicant and Network Rail to establish the position with regard to capacity and also to ensure that there had been appropriate engagement between the Applicant and Govia Thameslink Railway and East Midlands Railway [ER 3.20.131]. In the absence of confirmation that there is sufficient capacity in the rail network to accommodate the increased passengers that would be generated by the Proposed Development, the ExA considered that this issue would attract great negative weight against the making of the Order [ER 3.20.132].

606. In her further information request dated 2 August 2024, the Secretary of State invited the Applicant and Network Rail to set out an agreed position regarding the information contained within the Applicant's Rail Impacts Summary and to identify what, if any, further measures were necessary to address the outstanding issues. In its response, the Applicant restated its position that the level of design, analysis and engagement undertaken in partnership with Network Rail during delivery of the Direct Air-Rail Transit ("DART") and Luton Airport Parkway Station, which included future proofing for airport passenger growth, demonstrated that it was capable of accommodating throughput beyond that which is required of the application. While Network Rail's response dated 20 September 2024 accepted that it had agreed the analysis undertaken to understand the anticipated resulting passenger flow and circulation requirement of Luton Airport Parkway in 2017, prior to the construction of the Luton DART, it stated that this analysis preceded this application and that there was always risk that forecasting passenger movements would differ from the reality. To ensure a secure safe and efficient operation of the Station, Network Rail sought the inclusion of two new requirements; the first of which would require the Applicant to provide it with the gate line data for the Luton DART every six months showing the number of entry and exits on an hourly basis each day, and the second which would require the Applicant to instruct and pay for an independent consultant to undertake an assessment and modelling of passenger flow at the Station, to prepare a report recommending measures to mitigate the adverse unanticipated impacts from the operation of the Airport if Network Rail and/or another train operating company considered that there were any impacts that were different from those assessed in the 2017 Report. The Network Rail response then seeks that the Applicant should be obliged to fund the delivery of the recommended measures.

607. Although the Secretary of State recognises the concerns raised by Network Rail, she considers that the proposed two requirements should not be adopted because the proposed mitigation which would be sought by the second requirement is based on the need for future work to address unanticipated impacts which have by their nature not been assessed or examined. As not even outline or indicative thresholds for establishing a significant adverse impact or any likely or outline mitigation measures have been identified to the Secretary of State, she is unable to take a view on the appropriateness or likely effectiveness of the two requirements being proposed, nor is she able to take a view on whether any results arising from the monitoring can be directly related back to the Proposed Development. The second requirement also seeks to impose an obligation on the Applicant to fund undefined future works which the Secretary of State is not satisfied has been demonstrated to be necessary in the terms proposed nor suitably precise in terms of what future works may or may not be needed as a direct consequence of the Proposed Development.

The Secretary of State shares the ExA's concern that as Network Rail has not confirmed whether there is sufficient capacity on the rail network to accommodate the increase in passengers arising from the Proposed Development, particularly given the importance of the DART as a link to the railway and proximity of the main line station. The Secretary of State notes that the ExA attributed this matter great negative weight against the making of the Order [ER 3.20.154]. However, the Secretary of State agrees with the Applicant that Network Rail has not provided evidence which would suggest that the analysis in the ES is incorrect. On that basis, she is therefore content that the ES analysis is reasonable and, having taken into account the responses from Govia Thameslink Railway and East Midlands Railway (see below) she is satisfied that it is appropriate to reduce the negative weight for this matter from great to moderate.

608. In response to the ExA's recommendation that the Secretary of State satisfy herself that there had been appropriate engagement by the Applicant with Govia Thameslink Railway and East Midlands Railway, the Secretary of State asked for confirmation in her further information request dated 2 August 2024. The Secretary of State notes that the Applicant's response dated 20 September 2024 confirms that both Govia Thameslink Railway and East Midlands Railway had no concerns regarding rail capacity as a result of the Proposed Development or with the Applicant's Rail Impacts Summary. The Secretary of State is satisfied that appropriate engagement has been undertaken with both Govia Thameslink Railway and East Midlands Railway.

DART

609. The Secretary of State notes that a number of parties raised concerns about the DART relating to the cost, capacity and whether it would have any impact on car use to access the airport [ER 3.20.133]. The Applicant confirmed that, as the owner of the DART system, it would be able to take steps as required in the future to increase the attractiveness of the DART to passengers to reduce car use [ER 3.20.134]. While the Secretary of State has had regard to the concerns raised regarding the DART, like the ExA she agrees that the Applicant has demonstrated that there should be no capacity issue and is further satisfied that the Applicant has the ability to make usage of the system more attractive to passengers if required to support mode share targets. The ExA considered this matter weighs neither for nor against making the Order [ER 3.20.135]. The Secretary of State agrees.

Bus and Coach

610. The Secretary of State notes that a number of parties raised concerns relating to both future and current lack of bus and coach services to the airport. The Hertfordshire Host Authorities were concerned that the lack of detail in the application with respect to anticipated bus patronage would make it hard to plan future bus services [ER 3.20.136]. However, by the end of the Examination the ExA were satisfied that the Applicant had addressed these concerns, and that the Bus and Coach Study would be used to inform the Travel Plan [ER 3.20.138 - 3.20.140] combined with the amended Sustainable Transport Fund to include £1m for bus and coach services, including to 'pump prime' them [ER 3.20.139], was sufficient to ensure suitable bus and coach routes to the airport [ER 3.20.141 and 3.20.175].

611. The ExA concluded that amendments to the Travel plans requirement (as then numbered 31, now renumbered 36) were needed to secure the Bus and Coach study and added this to the list of certified documents set out in Schedule 9 [ER 3.20.141].

The Secretary of State agrees with the ExA that this matter neither weighs for or against the making of the Order.

Walking and Cycling

612. The Secretary of State has had regard to the concerns raised by several parties in relation to the lack of walking and cycling provision as part of the Proposed Development [ER 3.20.142 – 3.20.143]. In response, the Applicant stated that pedestrian and cycle facilities were indicated on all arms of the junction between the AAR link road and the Eaton Green Road. The Applicant also stated that cycling improvements were included in the toolbox of measures set out in the Framework Travel Plan. The Secretary of State notes, however, that Luton Borough Council did not consider that there was enough detail in the Framework Travel Plan and requested the Applicant to fund the design and construction of cycle route J in the Council's Local Cycling and Walking Infrastructure Plan [ER 3.20.144].

613. When questioned by the ExA as to how it had taken account of DfT Cycle Infrastructure Design guidance, the Applicant stated that the proposed off-site highway mitigation works had been principally designed to accommodate increased volumes of traffic, given they considered the Proposed Development would only generate a limited number of additional walking and cycling trips, but offered significant opportunities for improvements for cycle provision at a number of locations [ER 3.20.145]. The Secretary of State has had regard to the document 'Catchment area for staff walking and cycling' produced by the Applicant, wherein it is established that currently 2% of staff walked or cycled to work, but 28% of staff lived within a 15-minute cycle of the airport. Unlike the bus and coach study, the walking and cycling report only explored the catchment area and did not include proposals for any potential new cycle routes or detail any cycle facilities/routes that could be improved to make cycling to work more accessible and attractive to staff [ER 3.20.146].

614. The Secretary of State notes that the Applicant stated in the Surface Access Strategy that it would improve the access to the airport on foot and bicycle and detailed potential improvements such as dedicated cycling routes into the airport and measures such as exploring the popularity of power-assisted e-cycles, and further stated that it and the operator would look to improve onsite facilities to support cycling. The Secretary of State notes, however, that none of these improvements were included within the Proposed Development beyond being listed in the Framework Travel Plan toolbox of potential measures which could be included in the future Travel Plan [ER 3.20.148].

615. In response to the ExA's questions, the Applicant explained that as part of the first Travel Plan it would look to identify cycling improvements deliverable in the first five years and would work with Luton Borough Council to ensure airport proposals matched with the Council's developments to deliver corridor improvements with the greatest potential [ER 3.20.149]. Having considered the policies and guidance regarding sustainable transport as detailed at ER 3.20.150, the Secretary of State is minded to agree with the ExA, who does not consider that the Applicant has optimised walking and cycling provision in accordance with the requirements of national and local policies. Given the emphasis on cycling and walking across policies, the Secretary of State agrees with the ExA that this is a significant omission which attracts great negative weight against the making of the Order [ER 3.20.151].

Construction

616. The Secretary of State notes that a number of parties raised concerns in relation to the construction phase of the Proposed Development, mainly in relation to the disruption caused by the construction of the proposed off-site highway mitigation measures and the effect that construction traffic would have on the local road network. The Secretary of State notes that Buckinghamshire Council was particularly concerned by the lack of information that was provided in the application on routes which could be used by construction vehicles as Buckinghamshire is already affected by other construction projects [ER 3.20.156].

617. The Secretary of State notes that this matter was resolved by the close of the Examination following the Applicant providing an oCTMP and outline Construction Workers Travel Plan ("oCWTP") [ER 3.20.157] and in response to the ExA's commentary the Applicant amended requirements 14 and 15 in the draft Order to ensure there is consultation with the "specified authorities" [ER 3.20.160]. The ExA is satisfied that with the requirement for consultation would ensure that the final approved version of these documents are fit for purpose and suitably mitigated the construction related impacts on transport and traffic. The Secretary of State agrees. However, like the ExA, she considers that while temporary, the construction impacts would occur over a number of years due to the length of the various construction phases and therefore agrees with the ExA's conclusion that this issue attracts a little negative weight against making the Order [ER 3.20.162].

The Secretary of State's Conclusions on Traffic and Transport

618. The Secretary of State agrees with the ExA that matters relating to transport modelling are neutral and do not weigh either for or against the making of the Order [ER 3.20.164]. Further, the Secretary of State agrees that construction related impacts, while temporary and mitigated by the CTMP and CWTP, would occur over a number of years and subsequently attract little negative weight against making the Order [ER 3.20.165 and 3.20.178].

Traffic (including off-site highway works and parking)

619. The Secretary of State agrees with the conclusions reached by the ExA in relation to Traffic (including off-site highway works and parking) as set out at ER 3.20.166 to 3.20.170, save that in relation to the matter of the potential rat running on rural roads, she notes agreement has now been reached between the Applicant and the Hertfordshire Host Authorities (as summarised in the Traffic Calming in Hertfordshire section above). Accordingly, the Secretary of State is inclined to disagree with the great negative weight against the Order the ExA placed on this matter [ER 3.20.168] and considers that this matter should weigh neither for nor against the making of the Order.

620. With regard to the proposed mitigation for the effects of traffic around Hitchin, in the absence of agreement for amended designs more consistent with the Hertfordshire Host Authorities' policies (as considered above in the Hitchin Junctions section), the Secretary of State agrees with the ExA's conclusion that this matter attracts great weight against the making of the Order [ER 3.20.168].

621. The Secretary of State has had regard to the requirements of the NPPF as set out at ER 3.20.171. While the modelling suggests there would be no significant adverse effects to either the Local Road Network or Strategic Road Network, the Secretary of State agrees with the ExA that the amount of extra traffic the Proposed

Development would generate is considerable. Although the off-site highway mitigation works have been designed to alleviate this traffic increase at certain locations, the ExA considered that the numerous minor impacts across the network, when considered cumulatively, would have a severe impact and recommended that the Secretary of State give this issue great weight against the making of the Order [ER 3.20.179]. In light of the side agreement between the Applicant and the Hertfordshire County Council that provides for traffic monitoring of rural villages the Secretary of State considers that such monitoring should alleviate the cumulative effects to reduce the impact from severe to moderate adverse so that overall, this issue weighs moderately against making the Order.

Sustainable Transport

622. The Secretary of State is satisfied that the Applicant has sufficiently considered the concerns regarding the potential lack of bus and coach services to the airport and is content with the proposed mitigation which is secured through the amendment to requirement 36 and Schedule 9. Further, the Secretary of State is satisfied that the Applicant would have the ability to support mode share targets in the future, through control of DART ticket prices, to make usage more attractive to passengers. The ExA concluded that the number of journeys made to airports by bus and coach has been or can be maximised and that this matter weighs neither for nor against the making of the Order [ER 3.20.175]. The Secretary of State agrees.

623. The Secretary of State has carefully considered the ExA and Network Rail's concerns that there may be insufficient capacity on the rail network to accommodate the increase in passenger numbers that may arise as a result of the Proposed Development, meaning rail could not be relied on to maximise sustainable transport modes [ER 3.20.176]. However, she has explored this matter further with relevant Interested Parties and has not been presented with any compelling evidence to suggest that the Applicant's assessment of the rail impacts is incorrect and that there would be insufficient capacity. The Secretary of State has therefore decided to give this matter moderate negative weight against the making of the Order.

624. The ExA considered that the Applicant had not optimised walking and cycling provision in accordance with the requirements of national and local policy and concluded that the Proposed Development was not compliant with policy. The ExA concluded that given the emphasis on this matter across policies, this was a significant omission and that the Secretary of State should therefore attach great negative weight against the making of the Order on this matter [ER 3.20.177]. The Secretary of State agrees.

The Secretary of State's Overall Conclusion on Traffic and Transport

625. Overall, the ExA concluded that Traffic and Transport attracted great negative weight against the making of the Order. In light of the agreement reached between Hertfordshire County Council and the Applicant with regard to the monitoring on rural roads and in light of her conclusions on rail capacity, the Secretary of State considers the extent of the harm has been reduced and although she attaches great negative weight overall to this matter, it is at the lower end of that weighting.

PLANNING BALANCE

626. The ExA's overall recommended weighting on the matters examined are as follows:

- Air Quality (little negative weight ER 3.6.167);
- Alternatives (neutral - ER 3.5.28)
- Biodiversity (little negative weight – ER 3.7.103);
- Chilterns National Landscape (great negative weight -ER 5.2.37)
- Climate Change resilience (neutral – ER 3.9.28);
- Design (neutral – ER 3.10.91);
- Geology and Land Contamination Soils (neutral – ER 3.11.41);
- Greenhouse Gases and Climate Change (moderate negative weight – ER 3.12.127);
- Health and Community (moderate negative -ER 3.13.102)
- Historic Environment (great negative weight – ER 3.14.162);
- Landscape and Visual Effects (little negative weight in the longer term – ER 3.15.162);
- Land Use (The ExA did not provide an overall weighting for this issue. The weightings for the individual elements are set out in ER 3.16.100);
- Major Accidents and Disasters (neutral – ER 3.17.15);
- Need (great positive weight – ER 5.2.6. The Secretary of State's further consideration of this matter is set out in her conclusion on the Planning Balance);
- Noise and Vibration (great negative weight. The weightings for individual elements are set out in ER 5.2.17 - 5.2.34);
- Socio-economics (great positive weight – ER 3.19.53. The Secretary of State's further consideration of this matter is set out in her conclusion on the Planning Balance);
- Traffic and Transport (great negative weight – see ER 5.2.59);
- Waste and Resources (neutral – ER 3.21.23);
- Water Resources and Flood Risk (neutral – ER 3.22.115. However, see 'Consider of 'neutral' matters' section above);
- In Combination and Cumulative Effects (neutral – ER 3.23.20).

627. Notwithstanding the above, the Secretary of State has reached a different conclusion on the following matters:

Chilterns National Landscape

628. For the reasons set out in the Chilterns National Landscape section above, the Secretary of State has reached a different conclusion to the ExA with regard to the outcome of the Applicant's SQA, and while she does not consider that the Special Features of this national landscape would be significantly harmed by the Proposed Development, she considers that the residual harm that would occur carries moderate weight against the Proposed Development. Further, the Secretary of State considers

that the inclusion of new article 54, which provides for funding to be made available to further the purposes of enhancing and conserving the Chilterns National Landscape, helps to demonstrate that the amended duty under section 85 of the Countryside and Rights of Way Act has been satisfied. Taking both of these matters into account, the Secretary of State considers that this matter should carry moderate weight against the granting of the Order.

Traffic and transport

629. The agreement reached between Hertfordshire County Council and the Applicant to provide additional traffic monitoring in Hertfordshire has resolved concerns regarding the potential impacts on rural roads from increased traffic. This monitoring would also help to reduce the cumulative effects on the local and strategic road networks. Further, while the Secretary of State acknowledges the concerns regarding whether there is sufficient capacity within the rail network to accommodate the proposed increase in passenger numbers, she does not consider that Network Rail has provided evidence to suggest that the ES and the rail impact summary and its analysis is incorrect. While the Secretary of State has overall attached great negative weight against the making of the Order, it is at the lower end of that weighting. However, she considers that taking into account the agreement for additional monitoring and her assessment of capacity on the rail network the extent of the harms has been reduced.

Health and Community

630. While the Secretary of State agrees with the ExA's recommendation that each of the effects identified in the Health and Community section above attract little negative weight against the making of the Order, the Secretary of State considers that cumulatively, the residual harm on health and community from effects not already accounted for in other sections of this decision letter attract only little negative weight against the making of the Order

The Secretary of State's Conclusion on the Planning Balance

631. The Secretary of State is satisfied that the Proposed Development would support the Government's policy objective to make the UK one of the best-connected countries in the world and for the aviation sector to make a significant contribution to the economic growth of the UK. The Secretary of State also considers that the Proposed Development complies with Government aviation policies that support airports making best use of their existing capacity and runways. Great weight is given by the Secretary of State to the conclusion that the Proposed Development would be in accordance with such policies and that granting development consent for the Development would serve to implement such policy. The Secretary of State also places great weight on the significant economic and socio-economic benefits which would arise from the Proposed Development, and considers that these benefits are so substantial that they, along with the capacity that will be delivered, outweigh all of the negative environmental and other harms identified by the ExA even were she to accept the weight given by the ExA to those harms in all cases. However, her overall conclusion that the benefits outweigh all of the environmental and other harms identified is reinforced in light of the different judgments she has attached to the harms in respect of the Chiltern National Landscape, Traffic and Transport and Health and Community as set out above.

632. In considering this assessment, the Secretary of State has had regard to the requirements set out in policy (including MBU, ANPS and the OANPS) which require the in-principle support to be weighed against the economic and environmental impacts of a development. Given the need for additional airport capacity identified in the aviation policies and the economic and socio-economic benefits that are expected to flow from the Proposed Development, the Secretary of State considers that granting the Application is essential to the public interest.

633. The OANPS provides, in the context of sustainable growth, that an increase in total adverse effects from aviation noise may be offset by an increase in economic and consumer benefits. The Secretary of State is satisfied that the additional capacity and socio-economic benefits the Proposed Development is expected to deliver are so substantial that they would outweigh the adverse effects from aviation noise.

DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

634. The Secretary of State has made a number of minor textual amendments to the Order in the interests of clarity, consistency and precision. Further to the textual amendments the Secretary of State also makes the following modifications:

- The vires paragraph in the final paragraph of the preamble to the Order was incomplete and the Secretary of State has made amendments.
- Article 2 (interpretation) – the reference to the 1982 Act has been removed. It is a reference used twice in Schedule 2 (requirements).
- Article 2 – the reference to the 1972 Act has been removed. It is a reference used once in Schedule 2.
- Article 2 – paragraphs (12) and (13) have been removed and for clarity and transparency provisions regarding deemed consent for applications for approval or consent have been separately inserted into the relevant articles

635. Article 8 (consent to transfer benefit of Order) – paragraphs (4) and (5) have been omitted. The Secretary of State expects the areas of responsibility to be set out on the face of the Order if separate approval is not to be obtained and so disagrees with the position set out by the Applicant in its explanatory memorandum. This means the provisions at (a) and (b) have been omitted and separate consent will need to be obtained from the Secretary of State. The remaining provisions in the paragraph should include a reference to the relevant Work Nos but the Secretary of State has not been able to determine with sufficient clarity the relevant works to be attributed to each of the statutory undertakers listed. Therefore, these provisions have also been omitted together with paragraph (5) which is no longer needed. It will be necessary for the Applicant to obtain separate consent from the Secretary of State where needed.

- Article 9 (application of the 1991 Act) – paragraph (11) has been omitted. The Secretary of State does not believe she is best place to adjudicate on any issues that might arise and in addition the Applicant will have the benefit of the arbitration provision.
- Article 16 (traffic regulation) – paragraph (3)(a)(i) has been amended to refer to 12 weeks notice, rather than 28 days as drafted, which is the usual period provided for a permanent effect; and paragraph 3(a)(ii) is amended to refer to

28 days notice, rather than 14 days, which is the usual period for a temporary effect. The Secretary of State was unable to determine any explanation provided in the explanatory memorandum to justify the use of this shortened period for either a permanent or temporary effect. Paragraph 3(b) has been amended to refer to 28 days of receipt of the notice in the case of sub-paragraph (a)(i) and to refer to 7 days of receipt of the notice in the case of sub-paragraph (a)(ii). Paragraph (5) has also been amended to provide a time limit on the operation of the powers conferred by paragraph (1).

- Article 27 (compulsory acquisition of rights and imposition of restrictive covenants) – new paragraph (6) inserted limiting rights of acquisition in relation to plot 6-04.
- Article 30 (application of the 1981 Act) – this provision has been amended to remove the reference to the modification of the 2017 Regulations. The Secretary of State notes from paragraphs 3.120 and 3.121 of the explanatory memorandum that the intention of the modification is to facilitate the compulsory acquisition of rights that are for the benefit of a third party such as a statutory undertaker. The difficulty for the Secretary of State is that she firstly is not clear whether the provision will in fact be needed and secondly the identity of the third party is unknown. All consequential provisions have been removed.
- Article 33 (temporary use of land for carrying out the authorised development) – paragraph (9) has been removed. The provision seeks to permit the Applicant to acquire new rights where land listed in Schedule 7 is also listed in Schedule 5. This is not the case and the provision would seem to be unnecessary.
- Article 35 (special category land). The Secretary of State noted with concern that the land references for the replacement land and the special category land had not been set out on the face of the order for clarity and transparency.
- Article 50 (certification of documents, etc.) – a new paragraph (3) has been inserted to required the submission of an updated GCG Framework so that this document consistently refers to “within six months of new legal rights being published” [ER 3.6.136]; and to take account of the revised control in the light of new requirement 29 (annual air traffic movement cap for the authorised development) [ER 3.18.242].
- In Schedule 2 (requirements) – the Applicant is asked to check the reference paragraph 2(1)(g) contained in paragraph 6(3)(c). There is no provision contained in paragraph 2 or should it be sub-paragraph (2)(1)(g).
- In Schedule 2 – in the table in paragraph 7 there is no reference in Work No. 3h to Emergency Vehicle Assembly Area.
- In Schedule 2 – the Secretary of State has inserted new requirement 14 to ensure there is appropriate consideration of the Environment Agency’s Flood and Coastal Erosion Risk Data by the Applicant in its water resources and flood risk assessment.
- In Schedule 2 – in what is now paragraph 24(2) (exceedance of a Level 2 Threshold), there is a reference to what is now paragraph 21(6)(a), (b), (c) or (d) and a reference to sub-paragraph (7) would seem to be more appropriate.
- In Schedule 2 – requirement 36 concerning offsite highway works was a new requirement inserted by the ExA. The inserted requirement set out that the

report to be produced should be submitted and approved by the Secretary of State. It seems to the Secretary of State that the relevant highway works relate to the local road network and that it should therefore be matter directed to the local highway authority.

- In Schedule 2 – Part 6 (appeals) has been removed in its entirety. The Secretary of State is not sufficiently well placed to deal with these matters and takes the view that matters of disagreement are matters for the parties to resolve either by way of an agreed resolution process or the use of the arbitration provision. In relation to disputes regarding matters under the Control of Pollution Act there is also access to the procedure under the Magistrates Courts. Although the Secretary of State notes paragraph 4.51 of the explanatory memorandum she disagrees with the statement that appeal provisions are well precedent as this is certainly not the case for transport related DCOs. While she notes the reference to the Manston Airport DCO she firstly observes that Manston operates in a different way from Luton. Secondly the extent of the appeal provision is limited to one provision within Schedule 2 and is not the range of matters that are being proposed here. The paragraph dealing with the application of Part 8 of the Planning Act 2008 appears to be unprecedented and paragraph 4.53 provides no explanation or support for the need for this provision. The local authority will be able to access the statutory enforcement provisions set out in Part 8 without the need for replicating matters here.

REQUEST FOR COMPULSORY ACQUISITION AND TEMPORARY POSSESSIONS POWERS

636. The Secretary of State notes that in order for the scheme to be fully delivered, the Applicant considers it would be necessary for the Order to contain powers enabling the Applicant to compulsorily acquire land and rights over land, and to take temporary possession of land, that is not currently owned or occupied by them [ER 6.3.5]. The Applicant's Book of Reference and Land Plans identify all of the land that would be required [ER 6.3.6]. The Book of Reference additionally sets out the different categories of land, rights and the temporary possession of land being sought which has been summarised by the ExA at ER 6.3.7. The Secretary of State notes there is one plot identified as being Crown Land, the interests in which are held by Ministry of Housing, Communities and Local Government ("MHCLG" formerly the Department for Levelling Up, Housing and Communities) [ER 6.3.31] and for which consent has not yet been obtained from MHCLG [ER 6.3.51], and six plots identified as Special Category Land which is land forming part of a common, open space, National Trust land or fuel or field garden allotment [ER 6.3.32], for which replacement land is proposed to be provided [ER 6.3.45 - 6.3.49]. Further, as the Proposed Development would also involve Statutory Undertaker land, and statutory undertakers have raised objections, the Secretary of State notes that sections 127 and 138 of the Planning Act 2008 apply [ER 6.3.40 - 6.3.44].

637. A full description of the extent of the land and rights sought by the Applicant, together with the reasons for its requirement and the basis under which compensation would be funded, is set out in the Applicant's Statement of Reasons, Funding Statement, Book of Reference, Land Plans and by the ExA in general terms at ER 6.4.

638. In her considerations of compulsory acquisition (CA”) and temporary possession (”TP”) powers, the Secretary of State has had regard to the legislative requirements and national guidance set out by the ExA at ER 6.2.1 to 6.2.8.

639. The ExA considered the change requests made by the Applicant on 22 September 2023 and 5 October 2023 specifically in relation to CA and TP and this is set out at ER 6.3.38 and 6.3.39. The Secretary of State agrees with the ExA’s conclusions that the changes were non-material and would not alter the land required for the Proposed Development.

640. The Secretary of State had had regard to the objections received relating to compulsory acquisition matters and she is satisfied that the ExA has considered all the objections received [ER 6.5.2]. The Secretary of State has considered and concurs with the Examining Authority that the Applicant’s approach in relation to the compulsory acquisition powers sought for the following persons is acceptable:

- Bartholomew Pleydell-Bouviere [ER 6.6.3]
- Prospect House Day Nursery and Ace Sandwich Bar [ER 6.6.60]
- Category 3 parties [ER 6.6.61-64]

641. A number of objections are considered further below.

Bloor Homes Limited

642. The Applicant is seeking to permanently acquire land over 7 plots in which Bloor Homes Limited have an interest, in order to provide landscaping works (primarily hedgerows) for screening purposes. Bloor Homes Limited was concerned that this would interfere with its planning application for a residential development on this site and further, considered the landscaping works unnecessary as its proposed houses would screen views of the Proposed Development [ER 6.6.5 - 6.6.6]. The ExA noted that both the Applicant and Bloor Homes Limited had continued discussions about a voluntary agreement during the Examination, but this had not been secured by the close of Examination [ER 6.6.7].

643. As the planning application from Bloor Homes Limited was yet to be determined, the ExA considered there was an element of uncertainty and therefore the Applicant’s proposed landscaping works would be necessary to screen the Proposed Development from users of the adjacent footpath [ER 6.6.8]. The ExA considers that should the Secretary of State be minded to grant the Order as the benefits of the Proposed Development outweigh the harm, then it would also outweigh any private harm to this objector and CA powers could be granted in relation to these plots, should the Applicant’s works be deemed necessary [ER 6.6.8].

644. In her letter of 2 August 2024, the Secretary of State requested an update as to whether any agreement on acquisition had been completed. In their responses dated 25 November 2024, both the Applicant and Bloor Homes Limited’s representative confirmed the agreement was complete and Bloor Homes Limited’s objection was withdrawn. Consequently, the Secretary of State is content that the outstanding matters are now resolved.

Cella UK Property Trust

645. Cella UK Property Trust (”Cella”) has an interest in 16 plots, of which the Applicant was initially seeking to permanently acquire 11 plots and was seeking TP

rights over the remaining 5, to enable delivery of several elements of the Proposed Development including airfield works, terminal and associated works, airport support facilities, landscaping and mitigation, the AAR and airport operational roads [ER 6.6.9]. As Cella owns a stand-alone industrial warehouse on plot 1-74, which is currently leased by Luton Borough Council, it was primarily concerned that the permanent acquisition would result in a loss of access to the property and the acquisition of surrounding plots would lead to a loss of loading bays and HGV parking [ER 6.6.10]. It considered that full and early acquisition may be the only acceptable compensation for its interest [ER 6.6.11]. The ExA notes that the Applicant's closing submissions confirmed it would commit to acquire the whole property but that accelerating the acquisition would be premature, when Luton Borough Council's lease would not end until 2029 and by agreeing to buy the whole property at the time it was required, the Applicant had not prejudiced Cella's interest/investment in the property [ER 6.6.13].

646. Like the ExA, the Secretary of State is aware that the Applicant should only seek to acquire or possess land needed for the Proposed Development. However, in this case, doing so would adversely affect the remainder of the site through loss of its vehicular access and service area and so the ExA considers the acquisition of the whole site could be supported. However, as the additional acquisition is not the subject of this application and would be secured via private agreement and not via the Order, the ExA had to reach a conclusion based on the land requested by the Applicant in the Order [ER 6.6.14], which the ExA deemed necessary to construct and operate the Proposed Development. The Secretary of State agrees. The ExA considers that should the Secretary of State be minded to grant the Order because the benefits of the Proposed Development outweigh the harm, then it would also outweigh any private harm to this objector and CA powers could be granted in relation to these plots [ER 6.6.15].

Eldridge Family

647. In relation to the Eldridge family, the Secretary of State notes that although the family have an interest in 4 plots, the Examination focused on plot 6-04, of which the rights to 3.3 acres are required for the installation and maintenance of a fuel pipeline and the provision and maintenance of a landscape restoration area [ER 6.6.16].

648. The Secretary of State notes the Eldridge family's concerns detailed at ER 6.6.17 and also questioned why the use of their land was required when the Applicant already owned an adjacent plot and other land which could be used for the pipeline and landscape restoration [ER 6.6.18]. The Secretary of State also notes the Applicant's response that a number of engineering, design and environmental factors as well as connection to the national fuel pipeline at the north of the Eldridge family property, meant this was the only possible location. The actual route of the pipeline through the plot would only be determined after additional post-decision survey work and work would then be required to restore and maintain the landscape that had been removed during installation of the pipeline [ER 6.6.19 - 6.6.20]. However, the Applicant did advise that a right to manage the woodland was not required for Biodiversity Net Gain ("BNG") purposes and that this could instead be accommodated on land already owned by the Applicant; the ExA was advised that a letter of assurance confirming this had been provided [ER 6.6.21]. Despite this, a final agreement had not been reached at the close of Examination [ER 6.6.22].

649. The ExA is satisfied that although there is some uncertainty over the exact route, the pipeline would need to be routed through plot 6-04 and that a 6 metre easement over the pipeline would be required to enable construction, resulting in the removal of some trees, which would need to be replaced. The Secretary of State is likewise satisfied. However, the Secretary of State agrees with the ExA that the wider area of woodland is not required for landscape restoration or for BNG purposes and therefore the Applicant should reduce the land take at plot 6-04 to only what is needed to install, operate and maintain the proposed fuel pipeline [ER 6.6.23]. The remaining plots in which the Eldridge Family have an interest are ones where the Applicant is only seeking to extinguish rights that would interfere with the Proposed Development and the Applicant had committed to maintaining existing services to the Eldridge's property. The ExA considers that should the Secretary of State be minded to grant the Order because the benefits of the Proposed Development outweigh the harm, then it would also outweigh any private harm to this objector and CA powers could be granted in relation to these plots, subject to 6-04 being amended [ER 6.6.24].

650. In her letter of 2 August 2024, the Secretary of State requested that the Applicant confirm the position regarding the reduction to plot 6-04 and if appropriate, provide an amended land plan to reflect this reduction. The Applicant's response dated 19 August 2024, confirmed that plot 6-04 had been reduced with the woodland land take now at 599m², and an updated Book of Reference and Land Plans were provided to reflect this. ensure that the rights can only be exercised within the parameters set out in the assurance letter previously provided to the Eldridge family. Consequently, the Secretary of State is content that the outstanding matters are now resolved.

Follett Property Holdings Ltd

651. Follett Property Holdings Ltd have an interest in 42 plots, of which the Applicant is seeking to permanently acquire 36 plots and was seeking TP rights over the remaining 6, to enable delivery of several elements of the Proposed Development including airfield works, terminal and associated works, airport support facilities, landscaping and mitigation, and the AAR [ER 6.6.25]. Follett Property Holdings Ltd was concerned both that it was not provided with adequate time to reinvest the compensation monies and that the Applicant was seeking to acquire all the areas of car parking and amenity land but leave the building in isolation, which would be impractical to the occupants. As such, its preference was for full acquisition [ER 6.6.26], but this had not been agreed by the close of Examination [ER 6.6.27].

652. The Secretary of State is aware that the Applicant should only seek to acquire or possess land needed for the Proposed Development. However, if doing so would adversely affect the occupants of the building through loss of car parking and amenity land, then she is of the opinion that acquisition of the whole site could be supported. The Secretary of State understands a Deed of Assurance was in the process of being entered into [ER 6.6.27]. As the additional land take is not the subject of this application, the ExA concluded only based on the land requested by the Applicant, which the ExA deems necessary to construct and operate the Proposed Development [ER 6.6.28]. The Secretary of State agrees. The ExA considers that should the Secretary of State be minded to grant the Order because the benefits of the Proposed Development outweigh the harm, then it would also outweigh any private harm to this objector and CA powers could be granted in relation to these plots [ER 6.6.28].

653. In the Applicant's response to the Secretary of State's letter of 2 August 2024, it advises that it had become apparent that the interest in Voyager House, the building referred to in Follett Property Holdings Ltd concerns, had been transferred to Jaison Property Development Company Limited and the Applicant was now seeking a Deed of Assurance with them. The Secretary of State is content that the outstanding issue of the acquisition of the whole site does not need to be addressed with Follett Property Holdings Ltd and as above, she is content that the land in which Follett Property Holdings Ltd do retain an interest, is required to construct and operate the Proposed Development. The Secretary of State considers the position of Jaison Property Development Company Limited below.

GKN Aerospace Ltd

654. The Secretary of State notes that GKN Aerospace Ltd were broadly supportive of the Proposed Development and the acquisition of the 4 plots in which it has an interest, which are needed for the development of the AAR and link road and a new surface level car park [ER 6.6.29 and 6.6.31]. However, their primary concern was that the proposals for the AAR would directly impact its operational site and its ability to deliver an important and longstanding customer contract from the site [ER 6.6.29]. Although noting that this matter continued to be discussed between the parties and that the Applicant's closing submission referenced the Applicant taking action to mitigate any impacts on GKN Aerospace Ltd and ensuring a seamless transition of production into a new purpose-built building, the ExA confirmed that at the close of Examination, this matter remain unresolved [ER 6.6.30].

655. The ExA considers that the works are required to enable the Proposed Development, and so should the Secretary of State be minded to grant the Order as the benefits of the Proposed Development outweigh the harm, then it would also outweigh any private harm to this objector and CA powers could be granted in relation to these plots [ER 6.6.32].

656. The Secretary of State is not aware whether the Applicant's proposed work to mitigate the impacts on GKN Aerospace Ltd is complete but nevertheless she agrees with the ExA that as she considers the public benefit of the Proposed Development outweighs its harm then this outweighs any private harm to this objector and that she can grant the CA powers sought in relation to these plots.

Jaison Property Development Company Ltd

657. Jaison Property Development Company Ltd has an interest in 7 plots, of which the Applicant is seeking to permanently acquire 5 plots and was seeking TP rights over the remaining 2, to enable construction of the AAR, Terminal Approach and the AAR replacement car parking [ER 6.6.33]. Jaison Property Development Company Ltd was concerned both that it was not provided with adequate time to reinvest the compensation monies and that Applicant was seeking to acquire all the areas of car parking and amenity land but leave the building in isolation, which would be impractical to the occupants. As such, its preference was for full acquisition, but this had not been agreed by the close of Examination [ER 6.6.34 - 6.6.35].

658. The Secretary of State is aware that the Applicant should only seek to acquire or possess land needed for the Proposed Development. However, if doing so would adversely affect the occupants of the building through loss of car parking and amenity land, then she is of the opinion that acquisition of the whole site could be supported. The Secretary of State understands a Deed of Assurance was in the

process of being entered into [ER 6.6.35]. As the additional land take is not the subject of this application, the ExA concluded only based on the land requested by the Applicant, which it deems necessary to construct and operate the Proposed Development. The ExA considers that should the Secretary of State be minded to grant the Order because the benefits of the Proposed Development outweigh the harm, then it would also outweigh any private harm to this objector and CA powers could be granted in relation to these plots [ER 6.6.36].

659. As outlined above, the Secretary of State has been made aware that Jaison Property Development Company Ltd have now also gained the interest in the Voyager building, previously held by Follett Property Holdings Ltd and the Applicant was intending to seek a Deed of Assurance with Jaison Property Development Company Ltd to cover all outstanding matters. In their letter of 19 August 2024, the Applicant confirms such a deed was still being negotiated and that this would reconfirm the commitments made in the assurance letter previously provided to Jaison Property Development Company Ltd. The Secretary of State notes that to date, no further information has been provided regarding the Deed of Assurance for acquisition of the whole site including buildings. In the absence of any further information, the Secretary of State can only conclude based on the land requested by the Applicant, which she is satisfied is required for the Proposed Development.

John Andrew Jason and Jana Ninot Jason

660. In relation to the Jason family, the Secretary of State notes that they had an interest in 16 plots and the Applicant was seeking to permanently acquire 14 plots and to seek temporary possession of 2 plots. The Jason family were seeking an undertaking from the Applicant that provided an adequate period of time in which they could reinvest the compensation monies [ER 6.6.37]. Such an undertaking had not been finalised by the close of Examination although the Applicant's closing submission confirmed this was in progress [ER 6.6.38]. Like the ExA, the Secretary of State acknowledges the concerns regarding time periods but can only consider the application before her. As the acquisition and temporary possession of the Jason family's plots are required for construction and operation of the Proposed Development, the ExA concluded that should the Secretary of State be minded to grant the Order because the benefits of the Proposed Development outweigh the harm, then it would also outweigh any private harm to this objector and CA powers could be granted in relation to these plots [ER 6.6.39].

661. The Secretary of State has noted the Applicant's response to the letter of 2 August 2024, which confirmed that the Applicant is currently negotiating an assurance deed with these parties. This deed re-confirms the commitments in the assurance letter previously provided and is connected to the assurance deed with Jaison Property Development Company Ltd. It was therefore expected that both agreements would complete at the same time. The Secretary of State notes that to date, no further information has been provided. In the case of the Jason family, the Secretary of State agrees with the ExA that the plots are required for construction and operation of the Proposed Development [ER 6.6.39] and she considers that the issue of timescales related to compensation monies is outside the scope of her decision here.

The Trustees of Paul Tompkins Will Trust

662. Similar to Bloor Homes Limited, the 8 plots in which the trustees of Paul Tompkins Will Trust ("the trustees") have an interest, are required to screen views of

the Proposed Development from users of the footpath and to restore hedgerows. The trustees have questioned both the need for screening but also whether any screening would be compatible with their on-going use of the land [ER 6.6.40]. The ExA have noted that the trustees did not attend the Compulsory Acquisition Hearing and have also failed to respond to the ExA's written questions on this matter. It further notes the Applicant has not been able to progress the acquisition of the land voluntarily with the trustees [ER 6.6.40 - 6.6.41].

663. The ExA consider that the land is required for the Proposed Development and further, as the proposed works are along the boundaries of the fields, it does not consider that it would interfere with ongoing use of the land. The Secretary of State agrees. The ExA concluded that should the Secretary of State be minded to grant the Order because the benefits of the Proposed Development outweigh the harm, then it would also outweigh any private harm to this objector and CA powers could be granted in relation to these plots [ER 6.6.42]. The Secretary of State agrees.

Network Rail

664. The Secretary of State notes that Network Rail objected to any CA of rights over operational railway land and its assets, or extinguishment of the rights held by Network Rail over the same. Network Rail also objected to the Applicant seeking powers to carry out works in the vicinity of the operational railway without first securing protections for their statutory undertaking [ER 6.6.44]. While Network Rail confirmed that the precise impact of the works on the railway line and assets was still being assessed, irrespective of this, it believed that the CA powers sought were too wide ranging and would cause serious detriment to their undertaking unless wording was inserted into the protective provisions to prevent the Applicant exercising CA powers on railway property without Network Rail's consent [ER 6.6.45 and 6.6.47].

665. As set out by the ExA at ER 6.6.46 - 6.6.53, Network Rail and the Applicant continued discussions during the Examination. In particular, the Secretary of State notes that the Applicant provided a plot analysis for Network Rail, demonstrating its belief that there would be no interference with Network Rail's ability to under its operational duties [ER 6.6.50]. The Applicant considered that the current drafting of the protective provisions adequately provided for approval by Network Rail prior to any 'specified works' being carried out on Network Rail land and as such, Network Rail had an effective means of controlling the interaction of the Proposed Development and with its undertaking [ER 6.6.51]. The ExA noted that 'specified works' are defined in the protective provisions as being any of the authorised development as is situated upon, across, under, over or within 15m of, or may in any way adversely affect railway property [ER 6.6.58].

666. The ExA observes that the Applicant is seeking permanent acquisition of two plots which are owned by Network Rail for the purposes of delivering Car Park 1 which includes new / improved access into the proposed car park and improvements to the underpass associated with pedestrian footway beneath railway lines [ER 6.6.54]; is seeking permanent rights in one plot, for the purposes of providing an improved pedestrian access from the new staff car park through the existing tunnel and to the London-DART station [ER 6.6.55]; and is seeking acquisition of rights or temporary possession over the remaining 14 plots to deliver Car Park 2 and the off-site highway works on Eaton Green Road/Wigmore Lane [ER 6.6.43]. Having reviewed all plots and the proposed works, the ExA agrees with the Applicant that there would be minimal disruption to Network Rail's operation or the operation of Luton Airport

Parkway Station as a result. In the case of temporary possession, access for Network Rail would be retained where necessary [ER 6.6.54 - 6.6.57]. The Secretary of State finds no reason to reach a different conclusion.

667. Like the ExA, the Secretary of State considers that the purpose of CA and TP powers is to eliminate the need for the Applicant to undertake any further procedures to acquire land for an approved Proposed Development. As such, the addition to the protective provisions as requested by Network Rail is unreasonable but is also unnecessary, when the current drafting ensures any specified work on their land is subject to Network Rail approval. The ExA considers that this would allow Network Rail to ensure the works do not interfere with the operation and maintenance of the rail network [ER 6.6.58]. The Secretary of State agrees. Overall, the ExA conclude that should the Secretary of State be minded to grant the Order because the benefits of the Proposed Development outweigh the harms, then it would also outweigh any private harm to this objector and CA powers could be granted in relation to these plots [ER 6.6.59].

Statutory Undertakers

668. Like the ExA, the Secretary of State is aware that section 127 of the 2008 Act applies where a statutory undertaker submits a representation about the acquisition of land and this objection is not withdrawn. If this is the case, the Secretary of State must be satisfied that that the land or right can be obtained without serious impediment to the statutory undertaker carrying out of its undertaking, or that such impediment can be made good by the use of alternative land [ER 6.3.40]. Section 138 of the 2008 Act applies if the proposed land to be acquired has a relevant statutory undertaker right or apparatus. The Secretary of State must be satisfied that the extinguishment of the right or removal of apparatus is necessary for the Proposed Development [ER 6.3.41].

669. The Secretary of State agrees with the ExA's considerations regarding statutory undertakers at ER 6.7.1 - 6.7.20 and with its conclusions at ER 6.7.22 - 6.7.23, that in accordance with sections 127 and 138 of the 2008 Act, the CA powers sought would not lead to any serious detriment to statutory undertakers carrying out their undertakings and the interference with apparatus and extinguishment of statutory undertakers' rights would be necessary for the carrying out and operation of the Proposed Development.

670. Regarding Protective Provisions, the ExA noted the requests of Affinity Water, National Highways, Network Rail and the local highway authorities for bespoke provisions [ER 6.7.3]. For the reason outlined in Chapter 7 of their Report, the ExA is satisfied that the recommended DCO would provide an appropriate form of protection for the statutory undertakers [ER 6.7.12, 6.7.16 and 6.7.19] with the exception of Affinity Water. Affinity Water could not provide the ExA with details of why the standard provision was unsatisfactory and would cause serious detriment to its undertaking and without such details, the ExA cannot be satisfied that Affinity Water would be able to continue carrying out its statutory functions and cannot recommend the grant of CA and TP powers over the plots in which it has an interest. However, the ExA notes that an update will be provided to the Secretary of State as to whether an agreement has been reached or alternatively, Affinity Water will provide their proposed drafting, for her consideration [ER 6.7.8].

671. Post Examination, the Secretary of State received confirmation from Affinity Water in its letter dated 9 April 2024 that an agreement on protective provisions that

would avoid detriment to Affinity Water's undertaking had been reached and its objection was withdrawn. Consequently, the Secretary of State concurs with the ExA that adequate protection is provided to Statutory Undertakers such that there would be no serious detriment to the carrying out their respective roles and functions.

Special Category Land

672. The Secretary of State notes that the Applicant is seeking CA powers over special category land which is a designated district park (Wigmore Valley Park) and area of public open space [ER 6.8.1] which is required to accommodate most of the expansion works, including, but not limited to, the new Terminal, aprons and taxiways, car parking, water treatment plant and fuel storage facility [ER 6.8.2]. As such, section 131 of the 2008 Act is engaged, which states that where a DCO would authorise the CA of open space, the Order would be subject to special parliamentary procedure, unless the Secretary of State can be satisfied that one of the relevant subsections apply [ER 6.8.3].

673. The Applicant is proposing replacement land in exchange for the Order land, which would fall under subsection 4 of section 131, and the Secretary of State has had regard to the ExA's summary of the Applicant's proposals and conclusions at ER 6.8.4 - 6.8.12. The ExA highlighted that, in relation to CA, the main issues for consideration were:

- the quality of the open space and whether it would meet the 'no less advantageous' test in section 131;
- the status of the replacement land; and
- whether or not the designation of Wigmore Valley Park as an asset of community value ("ACV") had an implication for its acquisition. [ER 6.8.14].

674. In relation to these issues, the ExA found that the replacement open space would; in the long term, provide an enhanced experience and would be no less advantageous [ER 6.8.15]; provide sufficient land to replace that which would be lost [ER 6.8.18]; and that the designation of Wigmore Valley Park as an ACV meant there was uncertainty over timescales for acquiring the land voluntarily and so the need for CA powers remains [ER 6.8.21]. Further, in the event a community group acquires the ACV, this would not affect the ability of the Applicant to compulsorily acquire the land [ER 6.8.21]. The Secretary of State agrees with the ExA's findings.

675. The Secretary of State is content that replacement land will be provided in exchange for the Order land and that it will be vested in the prospective seller and subject to the same rights, trusts and incidents as attached to the Order land. Owing to this, subsection 4 of section 131 of 2008 Act applies, meaning special parliamentary procedure is not necessary. In addition, the Secretary of State agrees with the ExA that the replacement land would be no less in area and will be no less advantageous than it was before the making of this Order to those in whom it is vested, and those entitled to use the land, including the public [ER 6.8.22 - 6.8.23].

Crown Land

676. As outlined earlier in this section, the Secretary of State notes there is one plot identified as being Crown Land, the interests in which are held by MHCLG (formerly the Department for Levelling Up, Housing and Communities) [ER 6.3.31]. As such

section 135 of the 2008 Act applies, and consent of the relevant Crown Authority, being MHCLG, is required [ER 6.9.1]. The ExA noted that while the Applicant was confident consent would be obtained and this was not likely to be an impediment, consent could not be achieved by the close of Examination [ER 6.9.5]. Although the Secretary of State is aware that the Applicant was advised a section 135 case would be needed to explain how it would proceed with the Proposed Development should Crown Land need to be removed, she notes this was not provided to the ExA [ER 6.9.7].

677. In the absence of this information, the ExA considered the removal of the Crown Land plot 2-46 and concluded that the Proposed Development would not be able to proceed due to the reliance of the plot to deliver car parking and the new AAR [ER 6.9.8]. The ExA therefore recommended that the Secretary of State request an update from the Applicant as to the necessary consent from the Crown Authority and should this not be forthcoming, then the Proposed Development could not proceed, and the Secretary of State would have to withhold consent [ER 6.9.9].

678. In her letter of 2 August 2024, the Secretary of State requested that the Applicant and MHCLG provide an update on any consent for the compulsory acquisition. Within the Applicant's response of 19 August 2024 (Appendix B) was a copy of a letter from the Central Property Team at the Ministry of Justice confirming that Crown consent had now been given for plot 2-46, under section 135. Consequently, the Secretary of State is content that the outstanding matter of Crown Land is now resolved.

The ExA's Consideration of the case for Compulsory Acquisition and Temporary Possession

679. The Secretary of State has had regard to the ExA's consideration as to whether the case for compulsory acquisition and temporary possession powers has been made, which is set out at Chapter 6.10 of the Report.

680. The Secretary of State notes the ExA's views on the consideration of alternatives [ER 6.10.2 - 6.10.8] and that the ExA was content that the Applicant had explored all reasonable alternatives to CA, subject to plot 6-04 being reduced [ER 6.10.10], as discussed above. Additionally, the ExA explored at ER 6.10.11 - 6.10.17 whether the Applicant had undertaken diligent enquiry to identify affected persons falling into categories 1, 2 and 3 and it was satisfied the Applicant's enquiries were diligent and robust, and that the categories of persons under sections 44 and 57 have been applied [ER 6.10.18]. The ExA is also satisfied in respect of the need and justification for the extent of CA and TP powers sought which are required to facilitate the implementation and operation of the Proposed Development, that the Applicant has demonstrated how it intends to use the land rights, and that adequate compensation provisions are in place for those whose land is affected [ER 6.10.25 - 6.10.26].

681. The Secretary of State notes the ExA's consideration on the availability and adequacy of funding [ER 6.10.27 - 6.10.43] and in particular, that the ExA is clear that the Applicant does not currently have access to the necessary funds to finance the Proposed Development, including the costs of compulsory acquisition, [ER 6.10.45]. However, the ExA do note that the concession extension has provided for the £10 million required for CA, in the current financial year, which would cover the costs for Phase 1 only [ER 6.10.46]. Although noting the greater cost for the funding

of Phase 2 is not yet secured but is likely to be successful by the time it is required [ER 6.10.47], the ExA recognises that this creates a level of uncertainty. On this basis, the ExA suggested the inclusion of a new article 53 in the Order which would ensure CA powers would not be exercised for a phase of the development until such time a guarantee in respect of compensation payable for that phase is approved by the Secretary of State [ER 6.10.48]. Under the Department for Communities and Local Government Guidance ("DCLG Guidance"), an applicant must demonstrate there is a reasonable prospect of the requisite funds for acquisition being available [ER 6.10.29] and the ExA is satisfied the requirements of the Guidance are met and there would be a reasonable prospect of the funds becoming available to finance the Proposed Development, including compulsory acquisition [ER 6.10.49]. The ExA is also satisfied that the Applicant has met the relevant parts of the CA Guidance in that there should be no impediment to obtaining any other consents or licences required to implement the Proposed Development [ER 6.10.50].

682. The ExA's conclusions on the purpose for which CA is sought and the requirements of section 122(2) and section 115(2) of the 2008 Act are set out at ER 6.11.1 - 6.12.7. The Secretary of State notes the ExA is content that, with the exception of plot 6-04, the land to be acquired by CA powers would be required and is proportionate to facilitate, or be incidental to, the Proposed Development and that this is both for the principal development and the Associated Development [ER 6.11.3 and 6.12.7]. The ExA is satisfied that the requirements of section 122(2) (a), (b) and (c) are met [ER 6.12.7].

683. In relation to section 122(3) of the 2008 Act, the Secretary of State must be satisfied that there is a compelling case in the public interest to authorise land to be acquired compulsorily [ER 6.13.1]. Further, paragraph 13 of the DCLG Guidance confirms that the Secretary of State would need to be persuaded that the public benefits derived from the CA will outweigh the private loss suffered by those whose land is being acquired [ER 6.13.2]. As outlined earlier in the relevant sections of this letter, the ExA has considered the public benefits of the Proposed Development in the need and socioeconomic case. Although it concluded it would deliver a range of socioeconomic interest, the ExA found that in the planning balance, these benefits did not outweigh the adverse environmental impacts of the Proposed Development. In reaching this conclusion, the ExA recommended that the requests for CA were not granted as there was not a compelling case in the public interest [ER 6.13.4]. However, the ExA notes the Applicant's continued efforts to acquire the land through voluntary agreement and therefore acknowledges that the lack of a compelling case in the public interest, would not necessarily render the Proposed Development unimplementable [ER 6.13.6 - 6.13.7].

ExA's Recommendation

684. Overall, the ExA concludes that the public benefits when considered against other economic, consumer and environmental considerations, would not outweigh the harms identified and therefore is not satisfied that there is a compelling case in the public interest for land and rights over land to be acquired compulsorily [ER 6.17.1]. On this basis, the ExA is not recommending that the request for CA of land and/ or rights over land be granted [ER 6.17.2].

685. The ExA has noted that the Secretary of State may wish to take a different view and therefore considers that should the Secretary of State believe the public benefits

to outweigh the harms in this application, then the granting of CA powers is recommended, subject to the outstanding matters at ER 6.17.4 [ER 6.17.3 - 6.17.4].

Secretary of State's Conclusion on Land Rights and Related Matters (Compulsory Acquisition and Temporary Possession)

686. In reaching her conclusion, the Secretary of State has had regard to all relevant guidance in addition to the conclusions and recommendations made by the ExA. The Secretary of State agrees with the ExA that the Applicant has adequately demonstrated that there is a clear and significant need for the Proposed Development. She is likewise content of the need for the CA and TP powers sought, to facilitate the implementation and operation of the Proposed Development, that such powers are justified, and that adequate compensation provisions are in place for those whose land is affected. The Secretary of State agrees with the ExA that the Applicant had explored all reasonable alternatives to CA, and she agrees with the ExA's assessment in relation to funding, concluding there was a reasonable prospect of the requisite funds for the CA becoming available. She is further satisfied that the inclusion of the ExA's recommended requirement 53, would ensure that CA powers could not be used until suitable funding had been demonstrated. With regard to the extent of land requested, the Secretary of State is satisfied that the Applicant has a clear idea of how this land is to be used and that it has provided updated plans and a Book of Reference to reflect the appropriate reduction to plot 6-04. As outlined above, as Crown consent has now been obtained for plot 2-46, the Secretary of State is content that there are no other impediments to the Proposed Development being able to proceed.

687. The ExA considers that should the Secretary of State believe the public benefits to outweigh the harms in this application, then the granting of CA powers is recommended, subject to the outstanding matters at ER 6.17.4. The Secretary of State has explained in the Planning Balance section of this letter why she considers the benefits of the Proposed Development outweigh any adverse environmental impacts. She has also explained above that the outstanding matters of the reduction in land take at plot 6-04 and the obtaining of Crown consent for plot 2-46 have now been resolved. As such, she finds there is a compelling case in the public interest for the land to be acquired compulsorily. The Secretary of State also considers that the public benefits associated with the Proposed Development would strongly outweigh the private loss suffered by those whose land would be affected.

Human Rights

688. Like both the Applicant and the ExA, the Secretary of State acknowledges that the Order would engage Articles 1, 6 and 8 of the Human Rights Act 1998 [ER 6.15.2]. Paragraph 10 of the CA Guidance states that the Secretary of State must be persuaded that the purposes of the Order are sufficient to justify interfering with the human rights of those with an interest in the affected land [ER 6.15.1]. As the ExA did not find there to be a compelling case in the public interest for the CA powers to be granted, the ExA could not conclude that the purpose of the Order justifies interfering with human rights [ER 6.15.4].

689. For the reasons outlined in this letter, the Secretary of State is content that a case has been made for the need for the Proposed Development and for the significant socio-economic benefits that would be brought about as a result of the Proposed Development. She considers this to carry great weight. As she has found that in the

planning balance, the benefits outweigh the adverse environmental effects of the Proposed Development, she disagrees with the ExA and finds there is a compelling case in the public interest for the CA powers to be granted and furthermore, that this sufficiently justifies the interference with human rights.

690. The Secretary of State is satisfied that there is no violation of Articles 1, 6 and 8 of the Human Rights Act, that any interference with human rights is for legitimate purposes, proportionate and in the public interest. She is satisfied that the public benefits from the Proposed Development outweighs any impact on the human rights of those with an interest in the land affected, meeting the overarching aims of the Human Rights Act 1998 and relevant guidance.

LATE REPRESENTATIONS AND CONSULTATION RESPONSES

691. Following the close of the Examination, the Secretary of State received late representations and responses to her consultation questions. The Secretary of State has treated this correspondence as late representations and has published them as such alongside this letter on the Planning Inspectorate website.

692. Unless addressed above, the Secretary of State considers that these late representations do not raise any new issues that are material to the decision on the Proposed Development. As such, the Secretary of State is satisfied that there is not any new evidence or matter of fact in these late representations that need to be referred again to Interested Parties under Rule 19(3) of the Infrastructure Planning (Examination Procedure) Rules 2010 before proceeding to a decision on the Application.

GENERAL CONSIDERATIONS

Public Sector Equality Duty

693. The Secretary of State notes the ExA's consideration of the public sector equality duty ("PSED"), which was established by section 149 of the Equality Act 2010, in section 5.5 of its Report. The PSED requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion and belief; race; sex and sexual orientation [ER 6.16.1].

694. In taking her decision, the Secretary of State has had regard to the PSED and agrees with the ExA's conclusion that the Proposed Development does not differentially harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic [ER 5.5.2 and ER 6.16.3]. The Secretary of State is satisfied that a decision to grant development consent would not have significant differential impacts on any of the protected characteristics referred to in

section 149(7) of the Equality Act 2010. On that basis, she concludes that there would be no breach of the PSED.

Human Rights Act

695. On the provisions of the Human Rights Act, as set out above, the Secretary of State disagrees with the ExA in that she considers there is a compelling need for the Proposed Development that outweighs the impacts of the Proposed Development in the context of sustainable aviation development [ER 5.4.1]. She also disagrees with the ExA's conclusion that the proposed interference with the Human Rights of individuals is not justified in the public interest or proportionate when balanced against the need for the Proposed Development and the benefits that are expected from it [ER 5.4.2]. The Secretary of State is satisfied that that the purposes for which the Order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected.

Natural Environment and Rural Communities Act 2006

696. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 as amended by section 102 of the Environment Act 2021, has had regard to the purpose of conserving and enhancing biodiversity and, in particular, to the United Nations Environmental Programme Convention on Biological Diversity of 1992. The Secretary of State notes that in Examining the Application, the ExA has had regard to the application of the Environment Act 2021 and biodiversity duty [ER 3.7.92 and 3.22.51]. In reaching a decision to grant development consent, the Secretary of State has had due regard to the duty of conserving and enhancing biodiversity.

OTHER MATTERS

European Regulation 598/2014

697. The assimilated Regulation 598/2014 ("the Regulation") requires the Secretary of State, as the competent authority, to ensure rules and procedures are followed before introducing a noise-related operating restriction at an airport, in accordance with the International Civil Aviation Organisation's Balanced Approach to Aircraft Noise Management. The noise envelope proposed as a requirement to the grant of development under this DCO is considered to be a noise-related operating restriction application which is required to be considered under Regulation 598/2014. The report detailing that consideration is annexed to this letter.

Flood and Coastal Erosion Risk Data

698. The Secretary of State further notes the letter from the Environment Agency dated 25 February 2025 (Annex 1) which highlights the new Flood and Coastal Erosion Risk Data produced following the release of the Environment Agency's National assessment of flood and coastal erosion risk in England report. The Secretary of State notes the new data relevant to planning published on 28 January 2025, and that additional data was published on the 25 March 2025, with further updates to flood risk datasets being produced every 3 months and coastal erosion datasets every 12 months thereafter. The Secretary of State expects the Applicant to work with the

Environment Agency to consider what impact, if any, the new data may have and to produce any revised assessments as required and has inserted a new requirement in Schedule 2 of the Order to require the Applicant to consider the Environment Agency's flood risk and coastal erosion data in the Applicant's water resources and flood risk assessment.

SECRETARY OF STATE'S OVERALL CONCLUSIONS AND DECISION

699. For all the reasons given in this letter, the Secretary of State considers that there is a compelling case for granting development consent. Given the national need for the Proposed Development and the capacity it will deliver, referred to above, the Secretary of State does not believe that this is outweighed by the Development's potential adverse impacts. She has therefore decided to grant the London Luton Airport Expansion Development Consent Order Application, subject to the modifications to the Order referred to above. The Secretary of State is satisfied that none of these modifications constitute a material change. She is therefore satisfied that it is within the powers of section 114 of the 2008 Act for her to make the Order as now proposed.

CHALLENGE TO DECISION

700. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

PUBLICITY FOR DECISION

701. The Secretary of State's decision on the Application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Yours faithfully,
Gareth Leigh

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the 2008 Act, a DCO granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such a DCO, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the statement of reasons (decision letter) is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The decision documents are being published on the Planning Inspectorate website at the following address:

<https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/TR020001/documents>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the DCO referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).