

RESPONSE ON BEHALF OF THE SURREY HILLS NATIONAL LANDSCAPE BOARD TO THE DEPARTMENT OF TRANSPORT LETTER OF 3RD JANUARY 2025 - GATWICK AIRPORT.

AMENDMENT TO S.85 OF THE COUNTRYSIDE AND RIGHTS OF WAY ACT 2000(CROW ACT 2000) . APPLICATION BY GATWICK AIRPORT LTD SEEKING DEVELOPMENT CONSENT FOR THE PROPOSED GATWICK AIRPORT NORTHERN RUNWAY (THE DCO).

1. Preamble

The letter of 3 January 2025 invites the Applicant and relevant listed Protected Landscape bodies to set out an agreed position on whether the new guidance relating to the Levelling-Up and Regeneration Act 2023 (LURA) has any implications for ensuring the Scheme complies with the amended duty. If agreement cannot be reached their respective views should be set out on what is needed to resolve the concerns. The Surrey Hills National Landscape Board is grateful for this approach.

The Applicant has helpfully drafted a submission for agreement. However, there are such fundamental differences in their respective objectives with those of the Surrey Hills National Landscape Board the Applicant has been advised that agreement cannot be reached. Consequently, this submission is made on behalf of the Board. From the information available, the Board does not consider the Applicant has recognised sufficiently that the LURA is relevant. That in turn has influenced its approach to possible aircraft noise requirements or sought to assist the Inspector or Secretary of State in what it proposes can be incorporated into its proposals to comply with the LURA.

The relevant parts of Defra's new guidance are set out immediately below, followed by an explanation as to why there are no assurances so far the new duty is currently being met and what is needed for it to be met. The Secretary of State and her advisers will be aware that should the terms of LURA S.245 not be met and recognising Defra's recently published guidelines sufficiently there would be a risk of legal challenge to any DCO being issued. The letter of 3 January suggests that the Government recognises this risk and is keen to avoid it.

2. Guidance for relevant authorities on seeking to further the purposes of Protected Landscapes. Published 16 December 2024.

The following extracts from the above Government Guidance are relevant to the determination of the Gatwick North Runway Project.

“When to apply the duty

Relevant authorities will need to apply the duty when undertaking any function in relation to, or so as to affect, land in a Protected Landscape.

Of those listed in Defra's guidance those relevant to this development proposal may include:

- *decision making in respect of development management, planning applications and nationally significant infrastructure projects*
- *when considering the appropriateness of avoidance, mitigation, and compensation measures*
- *functions outside of a Protected Landscape which may have an effect on land in a Protected Landscape.*

When seeking to further the purposes, relevant authorities should consider the information contained in a Protected Landscape's Management Plan. Management Plans describe the natural beauty, special qualities and key characteristics of and targets and objectives for the designation.

Relevant authorities should make efforts to understand the Management Plan and relate their functions to it.

What a relevant authority should do

The duty is an active duty, not passive, which means:

- *a relevant authority should take appropriate, reasonable, and proportionate steps to explore measures which further the statutory purposes of Protected Landscapes*
- *as far as is reasonably practical, relevant authorities should seek to avoid harm and contribute to the conservation and enhancement of the natural beauty, special qualities, and key characteristics of Protected Landscapes*
- *a relevant authority should be able to demonstrate with proportionate, reasoned, and documented evidence the measures to which consideration has been given when seeking to further the statutory purposes of Protected Landscapes - for example, policies, strategies, operational procedures, estate management plans, investment plans, contracts, works instructions, assessments and reports which should be able to evidence the proper discharge of the duty by the relevant authority.*

What a relevant authority should consider

What are the statutory purposes that you should seek to further when exercising a function in the Protected Landscape it affects?

Do measures which would further the purposes align with and help to deliver the targets and objectives in the Protected Landscape's Management Plan?

Are such measures appropriate and proportionate to the type and scale of the function and its implications for the area? For instance, are measures in keeping with the natural beauty, the special qualities and key characteristics of the Protected Landscape?

*Could the measures contribute to the conservation and enhancement of the Protected Landscape's wildlife, ecological value and quality, geological and physiographical features, water environment, cultural heritage, dark skies, **tranquillity**, opportunities for access to nature, and landscape character for which the area was designated?*

Are there ongoing management needs for these measures?

How will the measures be funded and secured?

Has the relevant Protected Landscape team been approached for their views on whether or not measures help to deliver the Protected Landscape's Management Plan and further the purposes of the designation?

Does there need to be documented evidence, for instance a record of the decision and how it was reached?

Does the nature of the function require the operation of the duty to be periodically reviewed or monitored by the relevant authority?

The setting of Protected Landscapes

The duty also applies to functions undertaken outside of the designation boundary which affects land within the Protected Landscape.

*Natural beauty, special qualities, and key characteristics can be highly dependent on the contribution provided by the setting of a Protected Landscape. Aspects such as **tranquillity**, dark skies, a sense of remoteness, wildness, cultural heritage or long views from and into the Protected Landscape may draw upon the landscape character and quality of the setting.*

Note, the word tranquillity is in bold text as that is considered would be the greatest impact upon the Surrey Hills National Landscape arising from this proposal. “

3. What is needed to resolve the concerns of the Surrey Hills National Landscape Board.

This new active duty requires the Secretary of State being the relevant and determining authority of this particular application to undertake the 3 requirements in the relevant extract of Defra's guidance set out above. Without the Inspector's report and recommendation it is not known whether they are likely to be met when the Secretary of State's decision is made, although the letter of 3 January recognises there is an issue needing to be addressed. On the face of it and judging from the Applicant's draft joint statement invited by the Government, the Applicant's lack of recognition of the need to comply with the LURA is not assisting the Secretary of State to issue a DCO that would under the Applicant's terms comply with LURA. In this regard Gatwick Airport has stated in its draft submission that *“the NRP has no direct impact on a Protected Landscape, meaning that the list of practical measures set out in the Guidance are of limited relevance to the NRP proposals”*. That is strongly disputed and seemingly has influenced the Applicant's approach to the proposal and we hope has not influenced the Lead Inspector.

Tranquillity, twice highlighted in bold text in the extracts from Defra's guidelines for interpreting and applying the new duty in the LURA, is one of the criteria used by Natural England to assess landscape for potential inclusion in an AONB/National Landscape. It forms part of the purpose of designation. Consequently, it would seem inappropriate for the Government in determining this Development Consent Order to share the approach taken by the Applicant.

The new duty also applies to other relevant authorities, including local authorities, Natural England and the Civil Aviation Authority, in performing their functions, in responding to the application.

The Surrey Hills Officer Team is very small. The only Officer who would have been able to act upon to the Government's invitation of 14th August 2024 giving 5 working days to respond to the Lead Inspector's question on the new duty, was on leave during this peak summer holiday period. Consequently, the Board could only submit its response and expression of concern shortly after the

deadline and explaining why the deadline could not be met. In the event the submission was not accepted and that is why it does not feature in the relevant list of inquiry documents.

It is recognised that the final planning balance exercise on the application may result in the DCO being issued even though the development would not further the purpose of conserving and enhancing the natural beauty of AONBs. On the other hand concern over non compliance with the requirements of the LURA and any reluctance of the Applicant to accept it may when added to other harm result in the Secretary of State rejecting the proposal. Without seeing the Inspector's report and the reasons why the Secretary of State decision might issue the DCO, it is unknown whether the terms of any such decision will fulfil the most recent duty.

The new duty closely relates to national and local planning policies to give great weight to conserving and enhancing the natural beauty of AONBs (NPPF para 189). Relevant to this proposal the same paragraph 189 states *"development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas."*

Surrey Hills AONB Management Plan Policy P1 includes the following:

"...great weight will be attached to any adverse impact that a development proposal would have on the amenity, landscape and scenic beauty of the AONB and the need for its enhancement".

The reference to "amenity" in the policy includes tranquillity which is included in Management Plan Policy P2 as being given particular attention in respecting the special character of the locality. Clearly, the current application for Gatwick Airport with the prospect of further flights and noise harming the relative tranquillity of the Surrey Hills National Landscape, conflicts with these planning policies.

Natural England has been carrying out a review of the extent of the Surrey Hills National Landscape. This has involved thorough landscape assessments of landscape character by specialist landscape consultants as to whether additional areas meet NE's criteria of natural beauty sufficient to warrant AONB/National Landscape designation. The results of public and statutory consultations of draft proposals have been taken into account in the proposals likely to be put before the Secretary of State for Defra later this year. The draft proposals most likely to go forward after consultation include landscape to the west of Gatwick Airport currently overflowed in the areas of Ockley, Walliswood, north of Cranleigh and at Dunsfold.

The new duty is not placed upon the Applicant but on the relevant authority determining the proposal. Applicants, in seeking to persuade the relevant authority to grant permission, tend to go to some lengths to persuade the relevant authority to grant permission. In the case of the LURA this has more recently been to demonstrate that the proposal would meet the "seek to further..." requirement or to propose effective mitigation to minimise any harm and to provide compensation arising from any residual harm. The applicant in this case does not appear to have done so.

Natural England adopts an accepted principle of "avoid, mitigate, compensate" in the case of harmful development. If the development cannot reasonably be avoided then mitigation measures should be included in the proposal. If the mitigation measures would nevertheless result in residual harm then compensation should be provided by the applicant. It appears that if the relevant authority, namely the Secretary of State in this case, considers that the development would not conserve and enhance the natural beauty of the AONB, then in seeking to pursue this purpose of AONB designation according to the 2023 Act it should seek stringent mitigation and a Scheme of Compensation to be approved by the Government to be implemented before the development is implemented. It could be argued that if the Government does not itself pursue this aspect of the Act

how can it and the Courts reasonably expect other relevant authorities to do so rendering this provision of the LURA ineffective and not fulfilling its intention.

As the applicant does not appear to recognise the new duty is relevant or is of limited relevance it does not appear to have put forward mitigation measures in seeking to comply with S245 of the Levelling-up and Regeneration Act 2023. Therefore, it has remained for the Inspector and now for the Secretary of State to put forward, at the very least mitigation measures and agree to compensation for any residual harm to Protected Landscapes or else to reject the proposal.

The published Schedule contains measures to limit noise levels. However, it appears the applicant may not be prepared to accept them. Also it is unknown whether the Inspector has adopted the noise and noise monitoring requirements set out in the Schedule. Presumably the noise levels the Inspector has decided are necessary has been after considering all the evidence both for and against them to mitigate aircraft noise to a reasonable level, including on Protected Landscapes. The new duty strongly suggests the Secretary of State would be wise to accept the Inspector's recommended noise conditions and impose them and their monitoring as planning conditions. Failure to do so may encourage a legal challenge.

It is understood that Surrey County Council and the relevant Borough and District Councils are concerned about the proposed noise requirement in relation to the noise envelope and the absence of regular reviews of the noise impacts as the Local Authorities had been suggesting. Further that the Applicant is not proposing to address overheating in the Noise Insulation Policy. It is further understood that a collective response may be submitted following advice from AECOM consultants who have been providing technical advice on noise to the Local Authorities throughout the Examination. The Surrey Hills National Landscape Board is likely to support that response because it would align with the Board's own objectives.

It is noted that in a 2024 dated letter the Secretary of State asked the parties involved in the Luton Airport Expansion proposals what, if any, further enhancement measures they agree could be brought forward should it be decided further measures are necessary to assure compliance with the amended duty. The Secretary of State has not gone this far in the case of the Gatwick proposals. Yet Luton Airport is also outside but close to a Protected Landscape, like Gatwick airport. It appears that the applicant there had already proposed enhancement measures unlike the applicant at Gatwick Airport. Consequently, it seems there is a further way to go for mitigation and enhancement measures to be included in the Gatwick proposals in order to meet the new duty.

Should the Secretary of State agree that Protected Landscapes should be compensated for the residual harm following suitable mitigation measures, then in the case of the Surrey Hills National Landscape the most suitable arrangement would be either for a capital sum, or preferably annual grant, be made to the current Surrey Hills Trust Fund. It is a charity governed by the Surrey Hills National Landscape Board and currently administered by the Community Foundation for Surrey, being a further charity. The amount of annual grant should best be linked to the level of growth of passengers by increased flights. Board representatives would be happy to discuss this matter.

4. Conclusion.

As a first step in complying with the Levelling-Up and Regeneration Act 2023, the Secretary of State is asked to include in any Development Consent Order the noise and noise monitoring conditions as recommended by the Inspector.

Further, any Development Consent Order should be dependant upon a Scheme of Compensation for the residual harm following mitigation measures resulting from increased flights to be agreed between the applicant and the relevant Protected Landscapes. The requirement will be that no

development shall commence until the Secretary of State has agreed to the jointly agreed Scheme of Compensation or in default, to a scheme considered appropriate by the Secretary of State. The Scheme may take the form of an initial capital contribution to conservation and enhancement projects within the Protected Landscapes or, in the case of the Surrey Hills National Landscape, preferably annual grants to levels linked to the growth of passengers resulting from increased flights.

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14th January 2025