Communities Against Gatwick Noise Emissions (CAGNE)

Gatwick Airport Northern Runway project DCO application

PINS Reference Number: TR020005

SUBMISSIONS ON BEHALF OF CAGNE

21 May 2025

Introduction

1. In advance of the 9th June 2025 deadline, Communities against Gatwick Noise and Emissions ("CAGNE") has conducted an initial review of the Applicant's April 2025 submission in response to the Secretary of State's Minded To Letter ("MTL"). Following that review, CAGNE is concerned that the proposed approach gives rise to procedural unfairness and material prejudice to interested parties ("IPs"). Without prejudice to the procedural issues raised in these submissions, CAGNE will also be responding substantively to the Applicant's April 2025 submissions by 9 June 2025.

Post-Examination Events

2. In light of the recommendations of the Examining Authority ("ExA") to refuse the proposal put forward by the Applicant and examined by the ExA ("the First Scheme") but to approve an alternative proposal with tighter environmental controls ("the Second Scheme"), the Secretary of State understandably considered it necessary to seek further input from both the Applicant and IPs.

3. The Applicant has responded by proposing a third version of the development consent order ("DCO") ("the Third Scheme"), with a further untested set of requirements.

4. The environmental issues to which these evolving requirements pertain – namely noise and surface access – are fundamental issues to the determination of the application. They go to the very heart of the planning balance. However, the Third Scheme has not

been examined by way of the usual process. As such, there has been very little scope for evaluation, analysis or testing by any IPs (or their appointed experts), and none by the ExA, contrary to what would be expected had these changes occurred during the course of the Examination itself.

5. In particular, the ExA required a number of hearings to deal with noise and surface transport issues. CAGNE instructed expert witnesses to attend and participate in those hearings. The Third Scheme was not tested at all by the ExA at those hearings: it was simply not even a potential option at that stage.

6. The Applicant's Cover Letter to the Secretary of State in response to the MTL expressly states (emphasis added):

> "*We propose **detailed changes** to the position we put forward at application*"

7. There has been no formal Change Request. Nonetheless, PINS' Guidance on Change Requests usefully states as follows:

> "*When can a change request be accepted?*
> *[…]*
> *The Examining Authority will consider if there is sufficient time remaining in the examination process to examine the changed application. Whether sufficient time remains will depend on the complexity of the issues arising from the proposed change. For example:*
>
> > *the extent to which the change would generate new or different likely significant environmental effects* […]"

8. The Third Scheme now proposed by the Applicant clearly has the potential to generate new or different likely significant environmental effects. It is being proposed not simply towards the end of the Examination process, but even later – once that process has already been concluded.

Submissions

9. The High Court in *R (Holborn Studios Ltd) v LB Hackney* [2017] EWHC 2823 (Admin), held that there are two limitations on changes to a planning application. First, the substantive limitation: does what is proposed amount to a substantively different proposal? Secondly, the procedural limitation: would the change result in procedural

unfairness or substantial prejudice to any other party? Against the background of multiple hearings dealing specifically with noise and transport issues, at which a wide range of experts attended, a six-week paper-based consultation on a brand new proposal following the closure of the entire Examination is procedurally inadequate and unfair. As such, there is conflict with the second limb of *Holborn* studios.

10. CAGNE also notes that the application is Environmental Impact Assessment ("EIA") development supported by an Environmental Statement ("ES"), and as such is subject to the requirements of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the IEIA Regulations").

11. Reg. 7 of the IEIA Regulations provides that an ES in respect of an EIA development should include, *inter alia*:

> "7. *A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases*."

12. The Applicant's ES does not address the Third Scheme at all. As such, the ES does not include *"[a] description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects*" that is relevant to the final proposed scheme. Any change to the ES would also necessitate a full further consultation in accordance with the IEIA Regulations, and to ensure the vital, effective, public participation required by the Regulations: *Finch v Surrey County Council* [2024] PTSR 988 at §§18-21.

13. Accordingly, CAGNE invites the Secretary of State, as a matter of urgency, to re-consider the approach taken to the proposals. Now that the Applicant has chosen to advance the Third Scheme, at the very least the Secretary of State should require the Applicant to update the key chapters of the ES, including the description of the development, on which there should be full further consultation. In other circumstances, additional environmental information can be read alongside the existing ES, but the detailed nature of the changes made to produce the Third Scheme are such that an

update to the ES is required, to avoid confusion and allow for proper public participation.

14. The Secretary of State should, additionally, consider whether fairness requires the re-opening of the examination on the topics of noise and surface access. The Secretary of State is confronted with a set of circumstances that has not previously arisen during the determination of an NSIP application. In other examinations, applicants have engaged on the issues and addressed the ExAs' concerns during the process. This Applicant chose intransigence. The result was the ExA's recommendation of refusal of the Applicant's First Scheme, with the alternative of the tighter environmental controls in the Second Scheme should the Secretary of State take a different view on the planning balance. Faced with the ExA's recommendation of refusal (wholly predictable, given the Applicant's approach to the ExA's concerns), the Applicant has now chosen to propose the Third Scheme, without a change request. In those circumstances, if the Secretary of State is minded to allow the Applicant to progress the Third Scheme, CAGNE submits that fairness requires the re-opening of the examination on the topics of noise and surface access. While this will result in delays and expense, that is the consequence of the Applicant's failure to address the issues during the examination process which, exceptionally, the Applicant is being allowed to make good after the close of the examination.

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