

## 5. Legislative and policy overview

- 5.1.1 This chapter provides an overview of the relevant national, regional, and strategic local planning policies to establish the policy context against which the proposed variation to Conditions 8 and 10 will need to be considered. Further topic specific policies that have been considered are provided in the environmental topic chapters (**Chapters 6 - 10**) within this ES.

### 5.2 Legislative context

#### EIA directive 2014/52/EU<sup>22</sup>

- 5.2.1 The legal basis for EIA is derived from European Community (EC) Directive 85/337/EEC<sup>23</sup>, then further amended by Directives 97/11/EC<sup>24</sup> and 2003/35/EC<sup>25</sup> with the amended directive being consolidated as Directive 2011/92/EU<sup>26</sup>. Subsequent to this, Directive 2011/92/EU<sup>26</sup> has been substantially amended by Directive 2014/52/EU<sup>27</sup>.

#### Town and Country Planning (Environmental Impact Assessment) Regulations 2017

- 5.2.2 On 16<sup>th</sup> May 2017, the 2017 EIA Regulations<sup>28</sup> came into force in England to incorporate the requirements of the 2014 Directive into domestic legislation. These regulations apply to development which is given planning permission under Part III of the Act 1990<sup>29</sup>. The 2017 EIA Regulations revoked the Town and Country Planning (EIA) Regulations 2011<sup>30</sup>.

### 5.3 National planning policy context

#### National Planning Policy Framework

- 5.3.1 In February 2019, the Ministry of Housing, Communities and Local Government (MHCLG) published a revised National Planning Policy Framework<sup>31</sup> (NPPF), which sets out the Government's planning

<sup>22</sup> Environmental Impact Assessment Directive 2014/52/EU, [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0052> [Accessed 18 December 2020].

<sup>23</sup> Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment.

<sup>24</sup> Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.

<sup>25</sup> Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/E.

<sup>26</sup> Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification).

<sup>27</sup> Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

<sup>28</sup> The Town and Country Planning Act 1990 [online]. Available at: <https://www.legislation.gov.uk/ukpga/1990/8/contents> [Accessed 18 December 2020].

<sup>29</sup> Town and Country Planning (Environmental Impact Assessment) Regulations 2017 [online]. Available at: [http://www.legislation.gov.uk/uksi/2017/571/pdfs/ukxi\\_20170571\\_en.pdf](http://www.legislation.gov.uk/uksi/2017/571/pdfs/ukxi_20170571_en.pdf) [Accessed 18 December 2020].

<sup>30</sup> Town and Country Planning (Environmental Impact Assessment) Regulations 2011 [online]. Available at: <https://www.legislation.gov.uk/uksi/2011/1824/contents/made> [Accessed 18 December 2020].

<sup>31</sup> Ministry of Housing, Communities & Local Government (2019). National Planning Policy Framework, [online]. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779764/NPPF\\_Feb\\_2019\\_web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779764/NPPF_Feb_2019_web.pdf) [Accessed 23 November 2020].

policies for England and is a material consideration in determining planning applications. The revised Framework replaces the previous NPPF's published in March 2012 and in July 2018.

- 5.3.2 At the heart of the revised NPPF<sup>31</sup> is a presumption in favour of sustainable development through plan-making and decision-taking. Paragraph 11 sets out that this is taken to mean:

*"approving development proposals that accord with an up-to-date development plan without delay; or*

*where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*

*i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*

*ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."*

- 5.3.3 Section 9 (Paragraph 104) of the revised NPPF<sup>31</sup>, "Promoting Sustainable Transport", refers to large scale transport facilities and states that planning policies should:

*"...provide for any large scale transport facilities that need to be located in the area, and the infrastructure and wider development required to support their operation, expansion and contribution to the wider economy. In doing so they should take into account whether such development is likely to be a nationally significant infrastructure project and any relevant national policy statements..."*

- 5.3.4 Furthermore, Paragraph 104 presents a strengthened policy position in respect of aviation and states that planning policies should:

*"recognise the importance of maintaining a national network of general aviation airfields, and their need to adapt and change over time – taking into account their economic value in serving business, leisure, training and emergency service needs, and the Government's General Aviation Strategy".*

- 5.3.5 The revised NPPF<sup>31</sup> includes a range of other policies that are potentially relevant to the proposed variation to Conditions 8 and 10. These policies relate to (inter alia): health, air quality, climate change, and noise. Where appropriate, these policies are referred to in the topic chapters of this ES (**Chapters 6 - 10**) and are therefore not repeated here.

## National Planning Practice Guidance

- 1.1.1 On 6 March 2014, the Department for Communities and Local Government (DCGL), now known as the Ministry of housing, Communities and Local Government (MHCLG), launched the National Planning Practice Guidance<sup>32</sup> (NPPG), a web-based resource. Together with the NPPF<sup>31</sup>, this sets out the Government's overall planning policy framework. With specific regard to aviation and airport planning, the NPPG does not introduce any additional guidance beyond that which is already captured by the NPPF.
- 1.1.2 Where relevant, Noise Action Plans, and, in particular the Important Areas identified through the process associated with the Environmental Noise Directive and corresponding regulations should be taken into account (Paragraph: 006). The latest Noise Action Plan for 2019 – 2023<sup>33</sup> was

<sup>32</sup> Ministry of Housing, Communities & Local Government (2014). Planning Practice Guidance, [online]. Available at: <https://www.gov.uk/government/collections/planning-practice-guidance> [Accessed 18 December 2020].

<sup>33</sup> London Luton Airport. Noise Action Plan 2019 – 2023 [online]. Available at: <https://www.london-luton.co.uk/corporate/community/noise/noise-action-plan> [Accessed November 2020].

approved by Central Government. The Noise Action Plan is explained further within the relevant technical chapters of the ES.

## 5.4 Aviation Planning Policy

### Aviation Policy Framework

- 5.4.1 The Aviation Policy Framework<sup>34</sup> (APF) was published in March 2013 and fully replaces the 2003 Air Transport White Paper<sup>35</sup> as Government policy on aviation. The framework outlines objectives and principles to guide plans and decisions on airport developments, bringing together many related and discreet policies. By defining the Government's objectives and policies on the impacts of aviation, the APF sets out the framework within which decisions on aviation ought to be made to deliver a balanced approach to securing the benefits of aviation and to support economic growth.
- 5.4.2 The APF states that the "Government wants to see the best use of existing airport capacity" and that in the short-term, a key priority for Government is to continue to work with the aviation industry and other stakeholders to make better use of existing runways at all UK airports to improve performance, resilience, and the passenger experience.
- 5.4.3 The APF presents the government's objective to "ensure that the aviation sector makes a significant and cost-effective contribution towards reducing global emissions". This document postpones deciding on whether the UK should retain a national emissions target for aviation. It also sets out the need to better understand and manage the risks associated with climate change. This was deemed essential for the successful long-term resilience of the UK's aviation industry and its contribution to supporting economic growth and competitiveness.
- 5.4.4 Section 5 (planning) sets out that all proposals for airport development must be accompanied by clear surface access proposals which demonstrate how the airport will ensure easy and reliable access for passengers, increase the use of public transport by passengers to access the airport, and minimise congestion and other local impacts.
- 5.4.5 The APF set out the need for a national policy statement (NPS) for the case of any new national hub airport capacity, the Aviation NPS (ANPS) was published in June 2018. While on 27 February 2020 the Court of Appeal ruled that the ANPS was not validly produced, the Supreme Court overturned this decision in December 2020 and the ANPS remains in force.

### Aviation 2050: The Future of UK Aviation

- 5.4.6 The APF provided policy support for airports outside the South East of England to make best use of their existing airport capacity whilst the future of airports within South East England were considered by the Airports Commission. The Airports Commission concluded that an additional runway in South East England would be needed by 2030 but also noted that there would be a need for other airports to make more intensive use of their existing infrastructure. The Government agreed to support an additional runway at Heathrow through an ANPS and also published the *Beyond the Horizon: The Future of UK Aviation*<sup>36</sup> in 2018 to provide policy support for all airports

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<sup>34</sup> Department for Transport (2013). Aviation Policy Framework, [online]. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/153776/aviation-policy-framework.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/153776/aviation-policy-framework.pdf) [Accessed 18 December 2020].

<sup>35</sup> Department for Transport (2003). The Future of Air Transport, [online]. Available at: <https://www.gov.uk/government/publications/the-future-of-air-transport> [Accessed 18 December 2020].

<sup>36</sup> Department for Transport (2018). Beyond the horizon – The future of UK aviation, [online]. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/698247/next-steps-towards-an-aviation-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698247/next-steps-towards-an-aviation-strategy.pdf) [Accessed 18 December 2020].

who wish to make best use of their existing runways, including those in South East England, subject to environmental issues being addressed.

- 5.4.7 In essence, the *Beyond the Horizon: The Future of UK Aviation* established the Government's support for the Making Best Use (MBU) policy for all airports in the UK. It has also forecasted an accelerated growth in passenger demand in the London area at Heathrow, Gatwick, Stansted, Luton, and City. As such, the MBU policy is particularly encouraged at all London airports and Heathrow is envisaged by the Government to develop an additional runway on top of the MBU policy.
- 5.4.8 *The Beyond the Horizon: The Future of UK Aviation* nevertheless acknowledges that the MBU policy can have negative as well as positive local impacts, including on noise levels. The Government therefore considers that any proposals for MBU should be judged by the relevant planning authority, taking careful account of all relevant considerations, particularly economic and environmental impacts, and proposed mitigations (Paragraph 1.29).

### Airports National Policy Statement

- 5.4.9 The *Airports National Policy Statement (NPS)*<sup>37</sup> was published in June 2018. This followed approval from the House, after which it was designated as a national policy statement under the provisions of Section 5 (1) of the Planning Act 2008 subject to any legal challenge.
- 5.4.10 The NPS provides the primary basis for decision making on development consent order (DCO) applications for nationally significant aviation-related development and, specifically, a north-west runway at Heathrow Airport. Whilst the Proposed Scheme is not of a scale considered to be nationally significant, it is important to consider the proposals in the context of this national policy on aviation.
- 5.4.11 Specifically, in paragraph 1.39, the Government confirms that it is supportive of airports beyond Heathrow making best use of their existing runways albeit that they recognise that the development of airports can have positive and negative impacts, including on noise levels. Consistent with paragraph 1.29 of *Beyond the horizon: the future of UK aviation*, "Making best use of existing runways", the Government states 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.
- 5.4.12 As indicated in paragraph 1.39, paragraph 1.42 states that airports wishing to make more intensive use of existing runways will still need to submit an application for planning permission or development consent to the relevant authority, which should be judged on the application's individual merits. However, in light of the Airports Commission's findings on the need for more intensive use of existing infrastructure as described at paragraph 1.6 of the *Airports NPS*<sup>37</sup>, the Government accepts that it may well be possible for existing airports to demonstrate sufficient need for their proposals, additional to (or different from) the need which is met by the provision of a north-west runway at Heathrow Airport.
- 5.4.13 The Airport Commission's Final Report<sup>38</sup> recognised the need for an additional runway in the South East by 2030, but it also noted that there would be a need for other airports to make more intensive use of their existing infrastructure.

<sup>37</sup> Department for Transport (2018). Airports national policy statement: new runway capacity and infrastructure at airports in the south-east of England, [online]. Available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/714106/airports-nps-new-runway-capacity-and-infrastructure-at-airports-in-the-south-east-of-england-web-version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714106/airports-nps-new-runway-capacity-and-infrastructure-at-airports-in-the-south-east-of-england-web-version.pdf) [Accessed 12 December 2020].

<sup>38</sup> The Airports Commission: Airports Commission: Final Report (2015). Available [online] at:

<https://www.gov.uk/government/publications/airports-commission-final-report> [Accessed 23 November 2020].

- 5.4.14 On 24<sup>th</sup> October 2017, the Department for Transport (DfT) released its latest aviation forecasts. These are the first since 2013. The updated forecasts reflect the accelerated growth experienced in recent years, and that demand was 9% higher in London in 2016 than the Airports Commission Forecast. This has put pressure on existing infrastructure by airports over the past decade, and highlights that the government has a clear issue to address.
- 5.4.15 The Aviation Strategy calls for evidence set out that government agrees with the Airport Commission's recommendation and was minded to be supportive of all airports who wish to make best use of their existing runways, including those in the South East, subject to environmental issues being addressed.
- 5.4.16 The justification of the need for the Proposed Scheme is discussed in the **Planning Statement and Chapter 2: Proposed Scheme need and alternatives**. The Government's policy on this issue will continue to be considered in the context of developing a new Aviation Strategy.
- 5.4.17 The consultation document "*The future of UK aviation: making best use of existing runways*"<sup>39</sup> sets out that airport expansions under 10 million passengers per annum (mppa) should be considered at a Local Planning Authority level and take into account that the overall approach to reducing aviation GHG emissions from the UK is a matter to be tackled at a national level through the forthcoming Aviation Strategy<sup>218</sup> which will be considered as part of the Net Zero Aviation Consultation updated in Autumn 2020. The response concludes that the government intends to:
- to take forward new powers for the Secretary of State (delegable to the CAA) to direct that airspace change proposals are taken forward by airports or other relevant bodies;
  - take forward its sanctions and penalties regime proposal; and
  - give the CAA the responsibility for enforcing the sanctions and penalties regime.
- 5.4.18 The response includes an impact assessment on 'Enforcing the development of airspace change proposals'. This is not the final outcome of the *Aviation 2050 – the future of UK aviation* consultation, which will be added to when completed.
- 5.4.19 National Policy Statements can be material planning consideration when considering an application submitted under the Town and Country Planning Act. The ANPS includes national policy guidance across a range of environmental impacts which, whilst focussed upon Heathrow Runway 3, may have some relevance for other airports in the South East.
- 5.4.20 In February 2020, the Court of Appeal ruled that the Government had failed to consider the Paris Agreement in designating the ANPS and this procedural failure was an error of law. The ruling by the Court of Appeal has been challenged at the Supreme Court and overturned, and therefore the ANPS is a valid consideration for aviation projects.

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<sup>39</sup> HM Government (2018). Beyond the horizon: The future of UK aviation. Making best use of existing runways. [online]. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/714069/making-best-use-of-existing-runways.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714069/making-best-use-of-existing-runways.pdf) [Accessed 21 October 2020].

## 5.5 Planning policy context

### Local planning policy

#### Luton Local Plan (2011 - 31)

- 5.5.1 The Development Plan consists of the LBC Local Plan 2011 - 2031<sup>40</sup>, adopted in November 2017. Policy LLP6: London Luton Airport Strategic Allocation, states in relation to airport expansion that proposals for development will only be supported where:
- i. they are directly related to airport use of development;*
  - ii. they contribute to achieving national aviation policies;*
  - iii. are in accordance with an up-to-date Airport Master Plan published by the operators of London Luton Airport and adopted by the Borough Council;*
  - iv. they fully assess the impacts of any increase in Air Transport Movements on surrounding occupiers and / or local environment (in terms of noise, disturbance, air quality and climate change impacts), and identify appropriate forms of mitigation in the event significant adverse effects are identified;*
  - v. 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 and in accordance with the airport's most recent Airport Noise Action Plan;*
  - vi. include an effective noise control, monitoring and management scheme that ensures that current and future operations at the airport are fully in accordance with the policies of this Plan and any planning permission which has been granted;*
  - vii. include proposals that will, over time, result in 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, through measures to be taken to secure fleet modernisation or otherwise;*
  - viii. incorporate sustainable transportation and surface access measures that, in particular, minimise use of the private car, maximise the use of sustainable transport modes and seek to meet modal shift targets, all in accordance with the London Luton Airport Surface Access Strategy;*
  - ix. incorporate suitable road access for vehicles including any necessary improvements required as a result of the development”.*
- 5.5.2 Policy LLP38: Pollution and Contamination considers the effects of noise associated with new development and states that where adverse impacts are identified, appropriate mitigation will be required. In relation to pollution (including noise) the relevant part of the wider policy states the following:
- “Pollution*
- Evidence on the impacts of development will need to demonstrate whether the scheme (individually or cumulatively with other proposals) will result in any significantly adverse effects with regard to air, land or water on neighbouring development, adjoining land, or the wider environment. Where adverse impacts are identified, appropriate mitigation will be required. This policy covers chemical,*

<sup>40</sup> Luton Borough Council (2017) Luton Local Plan 2011-2031, [online]. Available at: <https://www.luton.gov.uk/Environment/Lists/LutonDocuments/PDF/Local%20Plan/adoption/Luton-Local-Plan-2011-2031-November-2017.pdf> [Accessed 18 December 2020].

*biological, and radiological contamination and the effects of noise, vibration, light, heat, fluid leakage, dust, fumes, smoke, gaseous emissions, odour, explosion, litter, and pests.”*

### London Luton Airport Development Brief

- 5.5.3 The Development Brief was adopted as Supplementary Planning Guidance in September 2001 with the intention to guide decision making for Airport related development. The Brief is considered to be a material planning consideration in the determination of any planning application and that development proposals complying with it will be supported subject to environmental impacts and mitigation.
- 5.5.4 The Development Brief sets out future developments at the Airport including the expansion of the Central Terminal Area, multi storey car parks, potential piers, taxiway extensions and links. The Development Brief supports the principle of the expansion of the Airport through three key objectives:
- to make the airport a better airport;
  - to make the airport a bigger airport; and
  - to be the best neighbour they can be.