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**BY POST & FAX TO 020 7453 6011**

## **URGENT JUDICIAL REVIEW PRE-ACTION PROTOCOL LETTER**

Dear Sir,

### **Changes to airspace arrangements at London City Airport**

1. We are instructed by HACAN East of 13 Stockwell Road London SW9 9AU, a campaigning organisation which gives a voice to residents under the London City Airport flight paths, regarding this matter.
2. On or about 22<sup>nd</sup> December 2015, the Civil Aviation Authority ("the CAA") gave notice of its decision to approve changes to the airspace arrangements relating to London City Airport ("the Airport") in particular new standard arrival and departure routes ("the Changes"). Whereas previously flights were dispersed over relatively wide corridors ("the Existing Wide Corridors") the intended and actual effect of the Changes is to concentrate all flights on a single precise corridor within each of the Existing Wide Corridors ("the Precise Corridor") at all times and at low heights over dense urban areas without any respite. The practical effect will be that for take offs to the west (73% of the time) significant areas of dense housing will be subject to significantly increased noise from climbing aircraft every few minutes in the am and pm peak.
3. The Changes are unlawful because the CAA:
  - a. failed to understand and properly apply Government respite policy on the facts of the case. Respite could and should have been delivered here by designating more than one new Precise Corridor within each Existing

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Wide Corridor thus avoiding creating a situation where all the activity in SW winds is focussed on the same people on the ground;

- b. failed to take into account consultation responses or address the matters raised in them;
- c. relied on a consultation exercise by the Airport which was legally flawed and which failed to identify or assess the key environmental impacts of the Changes.

## **The Background**

- 4. City Airport has been the subject of significant expansion over recent years and has significant further growth capacity under its existing permissions. Those permissions were based on noise exposure arising from the Existing Wide Corridors. The existing and future number of flights were not concentrated on precise corridors but on corridors which were up to several kilometres wide. The result was that no resident was subjected to direct over-flight on a continuous basis but that sometimes the planes would be directly overhead and sometimes significantly further away with obvious and major implications for the number of disturbing peak noise events experienced.
- 5. By virtue of advances in technology, it is now possible to focus flights on much more precise corridors. Changes to European Law will require adoption of the new technology (RNAV). There are some advantages of such concentration but also significant disadvantages for those living under the Precise Corridors when the planes are at low altitude because the effect is to focus on all flights directly above them thus significantly increasing the number of disturbing peak noise events with no respite. There is nothing in European legislation to require that RNAV be applied so that all traffic from wide corridors is focussed on a single narrow corridor.
- 6. The result of the Changes (especially when combined with the significant growth in flights already permitted) is that in the morning and evening peaks aircraft will

be flying at low altitude (well below 4000 feet) over almost precisely the same dwellings (with a very limited margin of error) every three minutes without respite whenever the wind is from the south west.

7. The magnitude of the impact and the need for respite are obviously central to the acceptability of the Changes.
8. The responsibility for consultation on the changes rested on the Airport. The Airport proceeding on the basis that the Changes were minor, went through a reduced consultation process as wrongly advised by the CAA and did not provide any information in its consultation document <http://www.londoncityairport.com/content/pdf/LCY-LAMP-Consultation-Document.pdf> as to the extent of the difference in overall noise environment which residents below the Precise Corridor would experience on the premise that “the effect associated with these potential impacts is expected to be small”(para 6 p36).
9. In its consultation response <http://www.hacaneast.org.uk/2014/11/hacan-easts-official-response-to-city-airports-flight-path-consultation/hacan-east-flight-paths-consultation-response/> HACAN raised the two inter-related issues of worsening of the noise environment for those below the Precise Corridors and the consequent need for respite.
10. The Airport’s response to the consultation <http://www.londoncityairport.com/content/pdf/LAMP-Consultation-Feedback-Report.pdf> expressly declined to examine either issue:
  - a. on the crude basis that the 57dba contour would not vary much (para 4.26). That contour tells us nothing about the impacts on those already within the 57dba contour and below the Precise Corridors. It thus does not address the key impact of the changes;
  - b. it appears to have justified its “small” impact view by reference to flights above 4000 feet (compare the Changes which are addressed at changes below 4000 feet) and on the assumption that the Existing Wide Corridors are 0.2nm wide (when they are plainly on the Airport’s own

documents much wider): see figure 3. Both assumptions fundamentally understate the impact of the Changes because they understate the difference in angle (and thus the prospect of intervening built barriers) and the peak noise from overhead flights;

- c. specifically refusing to address respite on the basis that that would mean introducing new route alignments which is outside the scope of the proposal. Respite does not require new route alignments but varying of the Precise Routes within the Existing Wide Corridors. It would therefore not have the effect contended for (para 5.5 p14).

11. The CAA in its decision failed to correct these fundamental misconceptions and failed to consider the two key issues to which the Changes gave rise.

12. It also continued to rely on the approach to the consultation which had been subject to detailed and compelling criticism by its own advisers.

## **Government Policy**

13. The Aviation Policy Framework (Cmd 8584) of March 2013 provides that the industry must reduce and mitigate noise as airport capacity grows (para 3.3) part of which is to have noise abatement operational procedures optimising the routes followed to minimise noise impacts (para 3.7). Whilst the 57dba contour approach continues – “we recommend that average noise contours should not be the only measure used when airports seek to explain how locations under flight paths are affected by noise” – para 3.19. As recognised by the Airport Commission appropriate methods necessarily include peak noise exposure and regularity.

14. Para 3.31 provides that in most circumstances it is desirable to concentrate aircraft along the fewest possible number of specified routes in the vicinity of airports and that these routes should avoid densely populated areas as far as possible. This is obviously not possible for westerly take offs from City Airport which have to turn right and right again over extremely densely populated areas of

east and north east London. This is therefore not “most circumstances.” Para 3.32 goes on that “in certain circumstances” where there is intensive use of certain routes - and we would add over densely populated areas – “it may be appropriate to explore options for respite which share noise between communities on an equitable basis, provided this does not lead to significant numbers of people newly affected by noise”. Plainly that policy applies here. By providing a number of Precise Corridors within Existing Wide Corridors respite would be provided whilst not exposing significant numbers of new people to noise. It is difficult to conceive of a more obvious case where respite should be aimed for.

## **The Legal Flaws**

### **Ground 1: Failure to understand, consider and apply the Policy on Respite**

15. So far as we have been able to ascertain, the CAA adopted the Airport’s approach to respite namely that it was not relevant. That is plainly inconsistent with government policy. When a proposed Change will focus all flights on narrow corridors (at a time when the number of flights is already permitted to rise significantly) the relevance of respite as a consideration is obvious. Here low flying aircraft will be flying well below 3000 feet over a large swathe of inner City dense population concentrations at 3 minute intervals in am and pm peaks on 73% of days on a precise route. The CAA therefore left out of account what was beyond doubt a highly material consideration.

### **Ground 2: Failure to conscientiously consider the consultation responses**

16. By reliance on the Airport’s Response to Consultation, the CAA failed to take into account in accordance with the established case law the key thrust of the objection to the Changes revealed through the Consultation. On a correct understanding, the Airport’s dismissal of the concerns was based on its flawed comparator, failure to consider the real world noise impacts rather than just the 57 dba contour and the true position regarding respite. Yet the CAA adopted and replicated all these mistakes.


## Ground 3: Consultation

17. The CAA appears to have condoned the partial and incomplete consultation carried out by the Airport despite having just received a comprehensive critique of it by its own consultants.
18. The key issue though is that the consultation document simply did not reveal or address the key issue, namely how those directly below the Precise Corridors would be affected. In this highly technical arena (and so as to allow third parties affected to properly comment), it was necessary for the consultation document to set out the impact in terms of peak noise events, regularity of flights and alternatives. Third parties can hardly be expected to do that exercise themselves.
19. The CAA has relied on the existence of a consultative committee at the Airport as the appropriate consultation body. The CAA knows that the consultative committee is not proactive; had a website which did not work during the consultation period; met in closed session to discuss the consultation and did not consult with the public. It also knows that the Airport refused to organise any public consultation of its own. The full details of the consultation and its flaws will be developed should a JR be necessary.

## The Result

20. For the reasons above, we invite the CAA to revoke the Changes and to undertake a proper exercise which addresses the noise implications for those in the Precise Corridors and the need for respite. Unless we receive a satisfactory response from you within 14 days we will commence judicial review proceedings without further notice.

Yours faithfully,



Leigh Day