



Department for Transport

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Dear Sirs,

TRANSPORT AND WORKS ACT 1992 APPLICATION FOR THE PROPOSED LONDON LUTON AIRPORT PASSENGER TRANSIT SYSTEM 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 application made on 1 July 2020 by your client, London Luton Airport Limited (“the Applicant”), for the proposed London Luton Airport Passenger Transit System Order (“the Order”) to be made under sections 1 and 5 of the Transport and Works Act 1992 (“the TWA”) and the additional information provided to the Secretary of State on 17 February 2021 and 22 February 2021 by the Applicant.
2. The Order would confer on the Applicant powers to operate the passenger transit system (“the system”) that will provide a mode of transit for passengers between Luton Airport Parkway railway station and the Central Terminal at London Luton Airport. It will also make provision in connection with the operation of the system, provide for fares to be charged for the use of the system and for the issuing of penalty fares and to give effect to byelaws which regulate travel on the system.
3. The Order would not authorise the acquisition of land or any works powers.

Summary of the Secretary of State’s decision

4. For the reasons given in this letter, **the Secretary of State has decided to make the Order.**

Procedural matters

5. As required under rule 14(2) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (“the Rules”), the application was publicised on 24 June 2020 and 2 July 2020 in the Luton News and London Gazette respectively.
6. The Secretary of State notes that the Applicant applied for a waiver direction under rule 18 of the Rules to disapply the requirement of rule 14(10) of the Rules to make application documents publicly available for inspection. This was because the COVID-19 pandemic-imposed movement restrictions and meant that public buildings were not open for the display of documents. On 29 April 2020, the Secretary of State sent a letter to the Applicant setting out that he was content to make the requested waiver direction. The application documents were available on the Applicant’s website and a telephone number was provided by which members of the public could request a physical copy of the application documents free of charge. The Secretary of State is therefore satisfied that the Applicant has fulfilled the requirements of the Rules and associated guidance as to consulting on and publicising the proposals comprised in the Order.
7. In response to the application, no objections, representations or letters of support were received by the Secretary of State. The application is therefore unopposed.

Background to and aims of the application

8. The Secretary of State notes that the Applicant has set out that London Luton Airport is a significant transport hub serving London and the South East of England. The airport is served by the railway line that runs between Bedford and the south coast and provides regular services to and from Central London. The Secretary of State notes that the system will be a fully automated cable guided system which will operate over a distance of around 1.4 miles for 24 hours a day, providing fast, frequent and reliable transfers for passengers between Luton Airport Parkway railway station and the Central Terminal at London Luton Airport. It is further noted that the Applicant has set out in its Statement of Aims that the purpose of the system is to improve passenger journey times and connectivity to and from the airport, and thereby to improve the experience of those travelling to the airport by rail and encourage more people to do so. This will enhance the airport’s environmental track record and help to reduce congestion.
9. The proposed Order would include:
 - a defence to proceedings in respect of statutory nuisance;
 - the power to charge fares and to issue penalty fares in connection with the use of the system;
 - bylaws regulating travel on the system and the power to make further bylaws in the future;
 - the power to enter into agreements with the police, including the British Transport Police, to provide policing services for or in connection with the system; and

- the power to transfer the powers under the Order from the Applicant to another person.

Funding

10. As set out in the Applicant's Funding Statement, the Applicant is wholly owned by Luton Borough Council ("LBC"). The construction of the system is being funded by a debenture loan provided by the LBC to the Applicant for up to £225 million.
11. The Applicant owns all of the land and all of the rights over land required to construct and operate the system. Consequently, there are no costs associated with the making of this Order related to compensation for blight or the compulsory acquisition of land.

The Secretary of State's consideration and decision

12. The Secretary of State notes that passengers who wish to travel to London Luton Airport by rail currently have to transfer from Luton Airport Parkway railway station to the airport by taxi or shuttle bus, and that the system will eliminate the need for the road transfer between Luton Airport Parkway and the airport.
13. The Applicant has set out that by removing the need for the road transfer, passenger experience will be improved, and local road users will benefit from less congestion and pollution.
14. The Secretary of State notes that planning permission for the system was granted by the LBC on 30 June 2017 under reference 17/00283/FUL and the Central Bedfordshire Council ("CBC") on 7 July 2017 under reference CB/17/00716/OUT. As set out in paragraph 12 above, all land and rights over land needed for the construction of the system have been acquired by the Applicant, and the Secretary of State understands that construction work is under way.
15. The Secretary of State further notes that the Applicant set out in its Consultation Report that only the Office of Rail and Road and Historic England responded to its consultation letter. The Office of Rail and Road stated that the system was outside its jurisdiction, whereas Historic England stated that it did not wish to comment beyond suggesting that relevant conservation and archaeological advisers are consulted as necessary. As set out in paragraph 7 above no objections, representations or letters of support were received by the Secretary of State after the submission of the application from these or any other parties.
16. The Secretary of State agrees with the benefits that the system will bring as set out in paragraph 9 above and is satisfied that the making of the Order is necessary for the system to operate effectively.

17. The Secretary of State has decided to make the Order, subject to modifications which do not make a substantial change in the proposals such as would require notification to affected persons under section 13(4) of the TWA.

Modifications to the Order

18. The modifications that the Secretary of State has made to the Order which do not affect the substance of the Order are as follows:

- In the preamble, the reference to section 2 of the TWA has been removed. Section 2 of the TWA is a power to extend section 1 of that Act to other guided transport systems. The power in section 2 was used to make the Transport and Works (Guided Transport Modes) Order 1992, under which the system is a prescribed mode. It is not a power under which the Order is to be made.
- In article 3, the provisions giving the Applicant statutory authority to operate and maintain the system have been removed. The Secretary of State's view is that the Applicant is sufficiently protected by the defence to proceedings in respect of statutory nuisance brought under section 82(1) of the Environmental Protection Act 1990, and that it would be inappropriate for the Applicant to have any further defence of statutory authority.
- In article 5, the procedure relating to bylaws has been changed to reflect the procedure in the Model Clauses for Tramways. It was unclear to the Secretary of State as to the intended operation of section 236(3) of the Local Government Act 1972. The explanatory memorandum accompanying the Order provided no clarification stating only that the bylaw provision had its precedent in article 53 of the Nottingham Express Transit System Order 2009 which the Secretary of State notes was based on the requisite model clause provision. In the absence of explanation, it seems appropriate to the Secretary of State that the wording of the bylaw provision should replicate that contained in the model clause.
- In articles 7(5) and 9(2), the requirement to publish a notice in a newspaper circulating in the area of the LBC and CBC has been supplemented by a requirement to publish a notice in such additional manner as may be approved by the Secretary of State. The Secretary of State is mindful in this regard that persons travelling on the system will not necessarily be local to the area of the LBC or CBC.

Notice of determination

19. This letter constitutes the Secretary of State's notice of his determination to make the Order, with modifications, for the purposes of section 14(1)(a) and section 14(2) of the TWA. Your client is required to publish newspaper notices of the determination in accordance with section 14(4) of the TWA.

Challenge to decision

20. The circumstances in which the Secretary of State's decision may be challenged are set out in the Annex to this letter.

Yours faithfully,

Natasha Kopala

ANNEX

RIGHT TO CHALLENGE ORDERS MADE UNDER THE TWA

Any person who is aggrieved by the making of the Order may challenge its validity, or the validity of any provision in it, on the grounds that:

- it is not within the powers of the TWA, or
- any requirement imposed by or under the TWA or the Tribunals and Inquiries Act 1992 has not been complied with.

Any such challenge may be made, by application to the High Court, within the period of 42 days beginning with the day on which notice of this determination is published in the London Gazette as required by section 14(1)(b) of the TWA. This notice is expected to be published within three working days of the date of this decision letter.

A person who thinks they may have grounds for challenging the decision to make the Order is advised to seek legal advice before taking any action.