Civil Aviation Authority
Westferry Circus
Canary Wharf
London EH14 4HD

By email: economicregulation@caa.co.uk

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Aer Lingus response to CAA Draft Decision on the regulatory treatment of early costs of capacity expansion at Heathrow airport (CAP3238)

Aer Lingus is the flag carrier airline of Ireland and a significant operator at Heathrow Airport, providing essential connectivity between Heathrow and Ireland, including services to Dublin, Cork, Shannon and Knock. Heathrow is a strategically important hub for Irish consumers and businesses, supporting both point-to-point travel and onward global connectivity.

Aer Lingus welcomes the opportunity to respond to the Civil Aviation Authority's ("CAA") Draft Decision on the regulatory treatment of early costs associated with capacity expansion at Heathrow Airport ("the Draft Decision"). However, Aer Lingus firmly opposes the CAA's proposal to permit Heathrow Airport Limited ("HAL") to recover £320million of early expansion costs during 2025-26 prior to the granting of a Development Consent Order ("DCO").

This response should be read alongside submissions made by our sister airlines British Airways, Iberia and Vueling, and our parent company International Airlines Group ("IAG"). Aer Lingus fully supports those submissions and does not restate all points made therein. Instead, this response focuses on the key implications of the Draft Decision for consumers, competition, regulatory integrity and the proper allocation of risk.

Our grounds and key points are set out below.

1. Prefunding in principle is wrong – costs should remain at risk until DCO approval

As set out in Aer Lingus' response to the CAA's recent consultation on early cost recovery (CAP3201), Aer Lingus' position remains that the recovery of early expansion costs from consumers prior to the granting of a DCO is wrong in principle. At this stage of the expansion process, the costs in question are inherently speculative. They relate to development activity for a project that has not yet been approved, may not proceed in its current form, and may not proceed at all. In those circumstances, such costs should remain at the promoter's commercial risk rather than being transferred to consumers.

The appropriate regulatory approach is an at-risk delivery model under which HAL bears development and planning risk until development consent is secured. Under such a framework, incentives to progress expansion efficiently are preserved, while ensuring that consumers are not exposed to speculative risk. Once a DCO has been granted, efficiently incurred costs can then be confirmed post-consent and become eligible for entry into the regulated asset base (RAB), with financing costs preserved. This approach strikes a more appropriate balance between enabling mobilisation and protecting consumers, and avoids transferring risk prematurely.

The CAA's rationale for departing from this approach - namely, that HAL may slow or defer activity in the absence of regulatory certainty on cost recovery - is not supported by the evidence and is internally contradictory. HAL had already incurred approximately £10million of expansion related expenditure before any consultation was launched and continued to incur costs throughout the consultation process. This is not the behaviour of a promoter that requires a guarantee of early cost recovery in order to proceed with planning activity.

There is also a clear inconsistency in the CAA's approach when compared with other UK airports. Gatwick Airport Limited obtained development consent for its £2.2 billion Northern Runway project in September 2025[1] without passing early development costs through a comparable regulatory pre-funding mechanism. The CAA has not explained why Heathrow should be treated differently, nor why consumers at Heathrow should be asked to underwrite speculative development risk in circumstances where this has not been considered necessary elsewhere.

Furthermore, the £320million now proposed for recovery does not exist in isolation. Over £500million of expansion-related expenditure was already incurred by HAL prior to 2020 and continues to be paid for by consumers via inclusion in the RAB. The CAA has yet to establish what tangible outputs or enduring consumer benefits were delivered by that earlier expenditure or the extent to which it has been used to reduce the costs and scope of the current programme. Consumers are therefore being asked to underwrite a further tranche of speculative expenditure without any satisfactory account of what the previous tranche achieved.

Ultimately, allowing speculative development risk to be passed to today's consumers in order to underwrite major early costs for a project that may not be approved, may not be delivered on time, and is likely to cost substantially more than currently projected, is disproportionate and unjustifiable. Such an approach undermines appropriate risk allocation, weakens incentives for cost discipline at an early stage, and is inconsistent with the CAA's statutory duty to further the interests of consumers.

2. The 2025–26 decision must not set a precedent for 2027 onwards

The CAA states that the Draft Decision does not establish a precedent for the regulatory treatment of future early expansion costs. That commitment must be upheld, and the CAA must establish a fundamentally different framework for costs incurred from 2027 onwards before expenditure is committed.

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[1] Gatwick Airport Limited (2025), 'Northern Runway Plans': https://www.gatwickairport.com/company/future-plans/northern-runway.html

The 2025–26 decision is, in reality, retrospective, covering costs that have already been incurred or committed. Any decision applying to charges incurred from 2027 onwards will involve genuinely prospective expenditure, where ex-ante scrutiny is both feasible and essential. These two situations are legally and substantively distinct and must not be conflated.

The reasoning underpinning the Draft Decision prioritises adherence to a Government-preferred timetable over cost control and consumer protection which is in and of itself wrong. Even if that approach were defensible in relation to already incurred costs (which Aer Lingus does not accept), it is wholly unsuitable as a basis for future decisions covering potentially billions of pounds of expenditure on land acquisition, enabling works and design commitments.

The Stewart Review (June 2025)[2] concluded that major infrastructure projects "*do not go wrong; they start wrong*", and that failure commonly arises where schedule is prioritised over cost from the outset. The CAA's proposed approach risks replicating precisely those failures. HAL's own advisers (Steer) identify a wide cost uncertainty range for the expansion project of approximately £32.7 billion to £52.4 billion (2024 CPI prices). At the upper end of this range, the consumer welfare case for expansion could be negative. The CAA has not assessed this risk or examined how it interacts with claimed consumer benefits.

The true scale of what is at stake must not be underestimated. Early expansion expenditure required to secure the DCO could potentially amount to as much as £9billion over the next few years. The current £320million is only the first instalment of a substantially larger pre-funding construction programme that will progressively define the scope, configuration and delivery model of the eventual scheme. The regulatory expectations created by the CAA's approach to this phase risk constraining its freedom of action at every subsequent decision point.

This creates a structural hold-out risk that will worsen as the programme progresses. Once consumers are committed to funding pre-consent expenditure, the sunk-cost problem transfers leverage to HAL in every subsequent regulatory step. The CAA cannot credibly revisit the scope of scheme, resist cost escalation or challenge design choices without implicitly accepting that consumer-funded activity did not deliver commensurate benefit.

Given total pre-DCO expenditure could reach much higher levels than the already excessive £320million being considered for 2025-2026, it is therefore essential that the CAA commits in its final decision to establishing a robust ex-ante governance framework for 2027+ costs, with sufficient lead time for proper scrutiny before expenditure is incurred.

3. The consumer benefits case is unproven and the CAA's "plausible scenarios" test is inadequate

Aer Lingus is concerned that the Draft Decision proceeds on the basis of a consumer benefits case that is both unproven and weakly evidenced, particularly given that the proposed intervention would impose direct and unavoidable costs on passengers.

The CAA has not commissioned any independent, up-to-date cost-benefit analysis to support its conclusions. Instead, it relies on a 2017 Department for Transport appraisal - now approaching a decade old - together with an August 2025 analysis commissioned and funded by HAL itself. While such material may provide background context, it does not constitute a sufficiently robust evidential foundation for a regulatory decision of this significance, particularly one that would transfer speculative development risk onto consumers.

[2] Stewart Review: Major Transport Projects Governance and Assurance Review: The HS2 Experience (published 18 June 2025) (the "Stewart Review"), including the central finding that major infrastructure projects "do not go wrong; they start wrong" (p. 8)

The primary benefit relied upon in the Draft Decision is the claimed elimination of alleged scarcity rents. That claim is contested and rests on analysis that has been subject to substantive methodological criticism by stakeholders. Those issues have not been resolved in the Draft Decision, nor has the CAA demonstrated that the claimed benefits are likely to materialise in practice, or that they would do so at a scale sufficient to outweigh the costs imposed on consumers.

The weakness of the benefits case is further underlined by the CAA's own acknowledgement of significant uncertainty around both the costs and benefits of expansion. That acknowledgement sits uneasily with the CAA's reliance on a specific Government timetable as a proxy for consumer benefit. Where costs, deliverability and outcomes are highly uncertain, timetable adherence cannot credibly be treated as a reliable indicator of consumer welfare.

For consumers, the downside risk is clear and immediate. Airport charges are passed through to passengers, and any recovery of early expansion costs therefore represents a direct and unavoidable cost to consumers, including Aer Lingus' passengers. Those costs would be incurred now, while any claimed benefits remain speculative, contingent and potentially many years away.

In this context, the CAA's reliance on a generalised "plausible scenarios" standard is inadequate. The existence of plausible scenarios in which consumers might benefit is not a sufficient basis for imposing certain and immediate consumer harm. The Better Regulation principle of proportionality requires the CAA to be satisfied, on a robust and evidence-based assessment, that the benefits of intervention are likely to outweigh the costs. On the evidence currently available, that threshold has not been met.

4. The proposed regulatory framework for 2025–26 costs is inadequate to protect consumers

The safeguards proposed by the CAA for the recovery of 2025–26 early costs are wholly insufficient to protect consumers. Ex-post review is inherently limited. By the time any review is undertaken, costs are sunk, information asymmetry favours HAL, and the regulatory leverage to challenge decisions has been lost. The CAA itself has previously moved away from reliance on ex-post review in H7 in favour of ex-ante scrutiny.

The Draft Decision permits £320million of consumer funding without defining what that expenditure must deliver. There are no defined outputs, success criteria or milestones, and no clawback if HAL withdraws from expansion.

The proposed expenditure cap does not operate as a binding constraint. HAL is already preparing revised bottom-up cost estimates, and any cap that yields to timetable pressure does not impose meaningful discipline or protect consumers. Genuine independence requires that any independent assessor is appointed by and accountable to the CAA, not to the party whose costs they are reviewing.

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Consumer-funded early design and preparatory work also risk foreclosing third-party delivery models and prejudging the outcome of the CAA's ongoing regulatory model review (CAP3195). Early expansion activities, particularly land acquisition, design development and engineering feasibility work, will progressively define the scope, configuration and delivery model of the eventual scheme. Once consumer-funded decisions are embedded, the informational advantage HAL accumulates through that work entrenches its position as the sole credible deliverer, regardless of what the regulatory model review concludes. This is a material concern for both effective competition and the integrity of the CAA's own ongoing review. Any governance framework for 2027+ costs must therefore be designed on a model-agnostic basis, preserving full optionality for alternative delivery structures.

Minimum requirements for any final decision
If, notwithstanding Aer Lingus' objections, the CAA proceeds with a form of early cost recovery, the final decision must, at a minimum, include:

- a binding ex-ante approval process for all 2027+ costs;
- clearly defined outputs and delivery milestones;
- a CAA-appointed independent assessor;
- debt-like (not equity) remuneration for pre-DCO expenditure;
- binding expenditure caps with a high evidential bar for any increase;
- implementing a binding commitment upon HAL to provide full and timely access to information to all prospective promoters;
- obligations on HAL to preserve design transferability and optionality for third-party delivery, including documenting and making accessible any consumer-funded design work; and
- a clearly defined clawback mechanism if a DCO is not obtained.

5. Consultation process shortcomings and potential legal implications

Aer Lingus has serious concerns about the consultation process followed by the CAA in reaching the Draft Decision and the implications this has for the robustness and lawfulness of the Authority's decision-making.

In particular, the CAA issued its minded-to position just 15 days after the close of the consultation period. Given the scale, complexity and significance of the issues raised by stakeholders - including detailed economic, regulatory and legal arguments - this compressed timeframe raises legitimate concerns as to whether responses were given proper and conscientious consideration. The speed with which the minded-to position was published gives rise to the perception that the outcome may have been substantially pre-determined, rather than genuinely informed by stakeholder engagement.

These concerns are reinforced by the fact that a clear majority of respondents opposed the proposals to allow early cost recovery prior to DCO consent, yet the Draft Decision does not meaningfully engage with the principal alternatives advanced by stakeholders, including the at-risk model for early costs. While the CAA is not required to agree with respondents, it is required to grapple with the substance of their arguments and explain why credible alternatives have been rejected. In Aer Lingus' view, this has not occurred.

Aer Lingus is also concerned that key analysis on which the final decision may rely has not been shared with stakeholders. The CAA has indicated that further evidence and analysis - including updated cost-benefit material - may inform its final decision. Proceeding on the basis of such material without providing stakeholders with an opportunity to review and respond would be inconsistent with established principles of lawful consultation, including the requirement that consultees be given sufficient information to enable an informed and effective response (as reflected in the Gunning principles).

Taken together, these procedural shortcomings raise serious questions about whether the consultation has met the standards of transparency, fairness and proper consideration required of an independent economic regulator, particularly where the decision in question would impose direct and irreversible costs on consumers.

If the CAA proceeds to a final decision without addressing these deficiencies, Aer Lingus reserves all rights, including the right to seek judicial review of the final decision and to pursue any other available legal remedies. Aer Lingus would strongly prefer to avoid such outcomes but must protect the interests of its passengers and the integrity of the regulatory framework.

Aer Lingus therefore urges the CAA to pause, address the procedural deficiencies identified above, and reconsider its position before issuing a final decision.

Aer Lingus

Conclusions and recommendations

For the reasons set out above, Aer Lingus considers the Draft Decision to be fundamentally flawed and inconsistent with the CAA's statutory duties to protect consumers, promote efficiency and maintain the integrity of the regulatory framework at Heathrow. **Aer Lingus urges the CAA to withdraw the Draft Decision** and reconsider the regulatory treatment of early expansion costs on the basis of an at-risk delivery model, under which HAL bears development risk until a DCO is secured and efficiently incurred costs are only confirmed for recovery post-consent.

If, notwithstanding these concerns, the CAA proceeds with permitting recovery of 2025–26 early costs, it must explicitly delink that decision from the regulatory treatment of future expenditure. The CAA has stated that the Draft Decision does not establish a precedent; that position must be clearly and unequivocally confirmed in the final decision, with no carry-over of the 2025–26 approach to costs incurred from 2027 onwards. The CAA must commit now to establishing a robust, CAA-led ex-ante regulatory framework governing all early expansion costs from 2027 onwards, developed with full stakeholder consultation and put in place before any such expenditure is committed. Before any further early cost approvals are contemplated, the CAA should also commission and publish an independent, up-to-date cost-benefit analysis of Heathrow expansion.

At a minimum, any such framework must include the safeguards set out in Section 4 above. Finally, the CAA must address the procedural deficiencies identified in this response before issuing a final decision. Proceeding without remedying these deficiencies would undermine confidence in the regulatory process and the robustness of the final decision, and Aer Lingus reserves all rights accordingly.