

## CAP 3164 Economic Regulation of NERL – response to Consultation

From: Gatwick Area Conservation Campaign

Dear CAA

We respond as a community organisation representing people who live in the Gatwick area and are impacted by aircraft noise. Airspace design decisions have a direct and material impact on our members' quality of life, health, and enjoyment of their homes.

We therefore have a legitimate interest in the licence framework proposed in CAP 3164, particularly where it governs how airspace design decisions are made, how transparent they are, and how affected communities are involved.

Our comments focus on the governance, transparency and consultation arrangements embedded in the proposed licence modifications.

### 2. Support for airspace modernisation, but concern about process

We recognise and support the policy objective of modernising UK airspace and improving system-wide efficiency and safety. Our response is not an objection to airspace modernisation in principle.

However, we are very concerned that the framework proposed in CAP 3164 risks undermining transparency, inclusivity and trust, which are essential if airspace modernisation is to be delivered efficiently and without prolonged dispute.

### 3. Shared concerns with industry stakeholders already identified by the CAA

We note that many of our concerns mirror those already raised by industry stakeholders during earlier consultations, as summarised in Chapter 1 of CAP 3164:

- Airlines (including British Airways, easyJet, Virgin and the trade body IATA) raised concerns that high-level licence obligations and reliance on guidance could reduce transparency and weaken safeguards, increasing dissatisfaction and dispute.
- Airport operators (including Manchester Airports Group) warned that over-centralisation of decision-making could sideline legitimate stakeholder input and increase the risk of challenge.
- Workforce representatives (Prospect) highlighted the importance of transparency, continuity and clear explanation of how prior commitments and design principles are carried through, to avoid loss of trust and conflict.

We note that the CAA acknowledged many of these concerns in principle, but largely chose to address them through non-binding guidance rather than enforceable licence conditions.

Communities share these same concerns, and in many cases experience the impacts of airspace design decisions more directly and continuously than industry stakeholders.

#### 4. Transparency: a core weakness in the current proposals

CAP 3164 places significant reliance on:

- high-level licence obligations,
- future guidance,
- internal plans (such as the strategic delivery plan and stakeholder engagement plan).

However, the proposed licence does not require:

- publication of alternative design options considered,
- explanation of how or why particular communities are affected,
- transparent assessment of trade-offs (for example, between concentration and dispersion of noise),
- clear reporting on how stakeholder input has influenced outcomes.

This lack of enforceable transparency is concerning given that the Airspace Design Service (ADS) will shape integrated designs before proposals reach the formal airspace change process.

Both industry and communities have warned that insufficient transparency increases dissatisfaction and the likelihood of dispute. We consider this risk to be real and foreseeable.

We note that NERL is not currently subject to the Freedom of Information Act, despite exercising monopoly public functions under statutory licence. Extending FOIA (or equivalent disclosure duties) to the Airspace Design Service would strengthen transparency, reduce suspicion and dispute, and help avoid the escalation of dissatisfaction into formal challenge.

#### 5. Consultation and participation: risk of decisions being fixed too early

We are concerned that CAP 3164 allows key design decisions to be taken upstream within ADS, with meaningful public engagement occurring only later through CAP 1616.

Experience in planning, infrastructure and environmental decision-making shows that:

- consultation must occur at a formative stage,
- later consultation cannot cure earlier exclusion from decision-shaping processes,
- dissatisfaction increases where people feel outcomes were effectively fixed before they were heard.

Airlines and airports raised similar concerns about reduced safeguards and consultation. Communities face the same risk, but often with fewer resources than industry to engage or challenge.

## 6. Cost efficiency versus false economy

We recognise that Chapter 2 of CAP 3164 prioritises:

- a short initial price control,
- cost pass-through,
- rapid establishment of ADS,
- deferral of enhanced scrutiny to a later review (NR28).

However, we are concerned that this minimum-cost, light-touch approach appears to treat transparency and robust consultation as optional “enhancements” rather than core design features.

This creates a real risk of false economy:

- Short-term savings achieved by reducing transparency and engagement may be outweighed by:
  - increased dissatisfaction,
  - legal challenge,
  - delay,
  - re-work,
  - and loss of trust after significant time and effort have already been invested.

Industry stakeholders themselves warned that reduced transparency and safeguards could lead to dispute and challenge. Communities are likely to have even fewer alternatives to formal challenge if they feel excluded.

In our view, it is likely to be less costly and more efficient overall to embed robust transparency and meaningful consultation from the outset.

## 7. Legal and public law context

We also note that:

- Airspace design decisions can engage rights under Article 8 of the European Convention on Human Rights, requiring fair and effective participation where quality of life is affected.
- Public law principles require transparency, procedural fairness and rational decision-making, particularly where impacts are foreseeable and long-lasting.
- Planning and environmental law increasingly emphasise early engagement and avoidance of “decide-announce-defend” approaches.

These principles support the expectation that communities should be treated as legitimate stakeholders in the airspace design framework, not merely consultees at the end of the process after decisions have effectively been made.

## 8. What we ask the CAA to reconsider

We therefore ask the CAA to reconsider whether CAP 3164 should:

1. Strengthen transparency obligations in the licence, including clearer requirements to publish options, assumptions and reasoning.
2. Require meaningful early engagement with affected communities, before ADS designs are effectively fixed.
3. Strengthen governance and accountability mechanisms, so that stakeholder input demonstrably influences outcomes.
4. Recognise that transparency and consultation are risk-management tools, not optional costs, and that stronger safeguards now may reduce delay and dispute later.

These changes would align community concerns with those already raised by industry, support the CAA’s objective of timely delivery, and reduce the risk that airspace modernisation becomes mired in avoidable conflict.

## 9. Conclusion

We support airspace modernisation and recognise the challenges involved. However, we are concerned that the current proposals risk prioritising short term issues and speed over transparency, inclusivity and trust.

Industry stakeholders have already warned that this approach risks dissatisfaction and challenge. Communities share those concerns and ask that the licence framework be strengthened now, rather than relying on future guidance or later reviews to correct structural weaknesses.