



Airspace and Noise Community Forum

Aircraft Noise Regulation and Enforcement

Paper by the AEF Airspace and Noise Community Forum

The AEF's Airspace and Noise Community Forum has prepared this paper for the Department for Transport (DfT) workshop on aircraft noise regulation and enforcement on 22 February 2022. The Forum surveyed its members on noise regulation and enforcement issues in January 2022 and feedback from that exercise is incorporated in the paper.

Summary

1. Current arrangements for the regulation and enforcement of aircraft noise are not fit for purpose. They require significant reform.
2. DfT does not appear to recognise that it has noise regulatory responsibilities. It has failed to clarify the government's noise policies, has no overall policy delivery process or programme, and does not monitor whether policy is being achieved.
3. The institutional framework and regulatory mechanisms through which aircraft noise policies are currently supposed to be delivered are fragmented, complex and confusing. This has created a "fog of accountability" and a regulatory vacuum. As a result, Government aircraft noise policies have not been delivered in any demonstrable way.
4. For regulation to be effective there should be noise limits at each airport, set by a body that is independent, expert and has enforcement powers. Limits should be updated at least every five years.
5. The deficiencies in aircraft noise regulation and enforcement also apply to airspace change proposals (through which modernisation will largely be delivered) and to planning assessments. There are no effective mechanisms to ensure airspace modernisation or airport expansion will deliver community benefits in the way or to the extent policy requires, or that any noise/environmental benefits asserted to be achieved will actually be delivered. This needs urgent attention.
6. We have repeatedly suggested ways in which these issues could be addressed but the Department has so far been unwilling to engage meaningfully on any changes to current arrangements. It should do so now.

Legal context

Section 76 of the Civil Aviation Act 1982 (and earlier Acts) protects the industry by providing that flights are exempt from actions in respect of trespass or nuisance. This creates the rationale for Section 70 of

the Environmental Protection Act 1990 which exempts aircraft noise (other than from model aircraft) from statutory nuisance legislation.

These exemptions have prevented the creation of legal precedent that might control aircraft noise. They mean that people adversely affected by aircraft noise are obliged to rely on the state to regulate, manage and reduce it. In those circumstances the Government has a particular responsibility to address aircraft noise thoroughly and effectively, with proper care and diligence. We do not believe it has done so or is doing so currently.

Why noise matters - scale of aircraft noise impacts in the UK

The UK suffers more from aircraft noise than any other European country. Data from the CAA published in 2014 showed that the top fifteen airports in the UK account for over one-third of the population affected by noise at the European level using standard measurements, with Heathrow accounting for more than a quarter.

The adverse impacts of aircraft noise have been widely researched and are extensively understood. Amongst other things we know that:

- Over a million people in the UK are exposed to aircraft noise above levels recommended for the protection of health
- Around 460 schools are exposed to aircraft noise at levels around Heathrow “that can impede memory and learning in children”
- Around 600,000 people in the UK are exposed to average aircraft noise levels that risk regular sleep disturbance¹.
- People living under the Heathrow flightpath are 10-20% more at risk of stroke and heart disease than those not living under the flight path².
- There is a negative relationship between aviation noise and house values, specifically higher noise levels cause lower house prices³.

There can be no doubt that aircraft noise has serious adverse health and other impacts and should be regulated robustly and effectively.

Opaque policy

The government’s core policies are that the number of people significantly affected by aircraft noise (or the total adverse effects of aircraft noise) should be limited, that those things should be reduced “*where possible*” and that the industry “*must continue to reduce and mitigate noise as airport capacity grows*” in order to share the benefits of growth.

Government policies are inevitably high-level statements. However, if they are to be delivered effectively, policies have to be explained, translated into legislation and guidance, monitored and enforced. A suitable institutional framework has to be put in place and kept under review.

¹ AEF report: Aircraft Noise and Public Health, 2016
<https://www.aef.org.uk/uploads/Aircraft-Noise-and-Public-Health-the-evidence-is-loud-and-clear-final-reportONLINE.pdf>

² <https://www.aef.org.uk/uploads/Aircraft-noise-and-cardiovascular-disease-near-Heathrow.pdf>

³ DfT research paper

In our view none of that has happened. Specifically, the government has not explained what “limit” and “where possible” mean. It has also not put in place mechanisms capable of ensuring that its policy goals are achieved and has not monitored the extent to which they have been achieved in practice. The recent Bristol Airport inquiry noted that “The concept of sharing the benefits is set down by the APF, but it gives no guidance on how it should be calculated or assessed⁴”.

On the other hand, the policy requirement that the industry “must continue to reduce and mitigate noise as airport capacity grows” is very clear but has not been delivered.

DfT itself acknowledged the need for change in the Aviation 2050 Green Paper where it said “The government intends to put in place a stronger and clearer framework which addresses the weaknesses in current policy and ensures industry is sufficiently incentivised to reduce noise, or to put mitigation measures in place where reductions are not possible⁵”.

However, there has been no further engagement on the measures proposed in Aviation 2050 and no progress in implementing them. In any event, the proposals it made were, in our view, neither stronger nor clearer. In some respects they were weaker than the Aviation Policy Framework.

Fragmented institutional framework

Aircraft noise regulation and enforcement in the UK is fragmented, complex and confusing. Many organisations including DfT, Defra, the CAA, planning authorities, airports and airlines have some role. But none has clear responsibility for requiring all possible noise reduction measures to be taken, or for setting, monitoring, enforcing and updating airport noise reduction limits that deliver government policy and balance the interests of all stakeholders. Because no body is responsible, opportunities to reduce noise are not systematically identified or expeditiously implemented, and the industry is not held to account. In our view there is regulatory and enforcement vacuum.

ICCAN had a similar view. It said: “The myriad pieces of legislation, regulation and guidance ... combined with the many responsibilities held by different organisations, result in a fog of accountability⁶”. It also said “There is little clarity or consistency to those outside the aviation world as to how the regulation and policy of aviation noise works⁷”.

Ineffective regulatory mechanisms

There are currently different mechanisms for designated and non-designated airports.

Designated airports

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https://gat04-live-1517c8a4486c41609369c68f30c8-aa81074.divio-media.org/filer_public/b2/09/b20947a3-b2e9-467a-b3fd-90a7e438c112/appeal_decision_3259234.pdf Paragraph 271

⁵ Aviation 2050, paragraph 3.114

⁶ ICCAN Corporate Strategy 2019-2021

https://iccan.gov.uk/wp-content/uploads/2019_07_25_ICCAN_Corporate_Strategy-2019_2021-1.pdf

⁷ ICCAN The future of aviation noise management

https://iccan.gov.uk/wp-content/uploads/2021_03_18_ICCAN_report_on_the_future_of_aviation_noise_management-1.pdf

At the designated airports the Secretary of State is, in theory, responsible for noise regulation. However, noise abatement procedures at these airports are both very limited and many years out of date. The procedures and controls at Gatwick, Stansted and Heathrow are respectively 17, 13 and 12 years old. As far as we are aware, other than for night flights, the Department has taken no steps to review either the nature of the controls or the limits they impose.

In relation to night flights, it has been clear for many years that there needs to be a substantial programme of research into their impacts. Community groups and others called for that in the clearest possible terms after that 2017 review, but nothing has been done. Existing night flight limits have now had to be rolled over for a further three years because, the Department asserts, there is insufficient evidence to do anything else.

As regards the government's three core policy requirements:

- There are no limits on overall aircraft noise at Gatwick (or planning controls on flight or passenger numbers, which could have the effect of limiting noise). There is a noise contour cap at Stansted. However, it is set at a level which the airport is unlikely ever to reach and therefore does not provide an incentive to reduce noise. None of the designated airport noise limits conforms with the CAA's 2013 recommendations for noise envelope design.
- The government has not put in place mechanisms to identify opportunities to reduce noise at designated airports and there are no arrangements for revising limits to incentivise the achievement of noise reductions.
- The government has made no attempt to enforce its requirement that noise should reduce as capacity grows. In almost all cases when designated airports have achieved non-trivial ATM growth their noise contours have also grown. Additionally, every application for increased capacity at the designated airports has sought an increase in noise. The benefits of growth are not being shared.

In our view current regulatory mechanisms at the designated airports are ineffective and have consistently failed to deliver government policy.

Non-designated airports

At the non-designated airports any noise regulation is achieved through planning controls or voluntary noise controls agreed locally. As a result a wide range of mechanisms has been used. These include contour areas, quota count limits, movement limits, night movement limits, and departure noise limits. Feedback from local groups suggests that:

- Many noise controls are out of date and no longer effective. The Melbourne Civic Society (East Midlands Airport) told us that *"noise limits, night charging differential, night surcharges on QC4 aircraft are designed and set sufficiently low so that they are not effective incentives for the operators to make fleet changes"*.
- Noise controls are not reviewed regularly: The North West Leeds Transport Forum (Leeds Bradford Airport) said *"The existing limits were introduced many years ago (1993) and have not been revised to reflect the availability of quieter aircraft. Indeed, LBA's proposal to increase the*

maximum QC value for night time departures represents a step in the opposite direction. LBA's current proposals do not include any provision for progressive revision of the proposed limits or contours".

- Noise controls do not share the benefits of growth by reducing noise as capacity grows. NWLTF also said "*We cannot identify any limits on noise or other impacts which would help ensure that benefits at LBA are shared with local communities. Most specifically we cannot identify any attempts to reduce noise impacts as airport capacity grows".*
- Some airports have planning controls that apply 'never exceed' noise contours. However, these are based on average contours that are frequently exceeded on a given day. While these exceedances do not represent a legal breach, average contours provide the illusion of a limit and create false expectations about likely exposure levels.

For a range of reasons, we do not believe it is responsible or appropriate for the government to rely largely on the planning system to deliver its aircraft noise policies. Amongst other things:

- established use rights at many airports and airfields result in a lack of opportunity to impose noise controls
- there is no regularity or predictability as regards the timing of planning events and they are in any event in the control of airports themselves. It is therefore possible for many years to pass without limits and noise reduction opportunities being reviewed. At Bristol Airport, for example, limits set by a planning process in 2011 have only just been reviewed.
- planning controls are often not couched so as to permit the progressive release of additional capacity as noise reduces and in some cases are not adequately monitored
- no planning cap that we are aware of conforms with the CAA's 2013 recommendations for noise envelope design
- planning authorities are not always representative of impacted populations and may be conflicted by being financial beneficiaries of an airport
- many planning authorities do not have the expertise to regulate aircraft noise effectively.

Some of these deficiencies have been illustrated at Luton Airport over recent years.

Luton Airport case study

Luton Airport is owned by Luton Borough Council, its local planning authority. In response to the Airports Act 1986 the Council divested its ownership to a wholly owned subsidiary, London Luton Airport Ltd (LLAL). The company is directed by Members of the Council.

In 2013 the Council gave planning permission to the airport operator to increase capacity from 9 to 18 million passengers per annum over a 15-year period, subject to noise contour limits which balanced growth with the mitigation of less noisy aircraft. At the same time, the Council and LLAL put in place a financial incentive for the airport operator to achieve rapid growth. Despite the Council being required to scrutinize planning conditions, the operator breached its noise contour limits in 2017, 2018 and 2019 as a result of releasing too many slots before less noisy aircraft had been introduced. The Council invited it to regularize the breach by applying to increase the contour limits and capacity, which the operator duly did, and the Council agreed to permit the increases (this application is the subject of call-in requests). In 2019, while knowingly being in breach, the airport operator submitted a Noise Action Plan 2019-2023 to Defra stating it would operate within its noise contour limits. The plan was adopted but there has been no follow up by Defra.

As regards the government's three core policy requirements:

- There are no limits on capacity or aircraft noise at, for example, Manchester, Glasgow and Belfast International airports and DfT has made no attempt to require limits to be put in place. At other airports noise limits are frequently outdated and of little practical relevance. Whilst out-of-date limits provide a theoretical cap on noise they are not effective in managing or reducing it.
- As far as we are aware non-designated airports do not have effective (that is independent and expert) mechanisms to identify opportunities to reduce noise. In any event, as discussed above, there are no arrangements for revising limits to incentivise the achievement of noise reductions and there are no other enforcement arrangements.
- The policy requirement that noise should reduce as capacity grows has not been achieved. In almost all cases when non-designated airports have achieved ATM growth their noise contours have grown. Additionally, applications for increased capacity at non-designated airports have generally proposed increases in noise. The recent Bristol inquiry accepted that noise would increase if expansion went ahead but allowed the proposal nonetheless.

Noise action plans

Noise Action Plans are required by law to contain estimates of the reduction of the number of people affected by the plans they propose. Many do not. The Department and Defra were aware of this when the current NAPs were submitted but chose to adopt them regardless. There is in any event no monitoring by DfT or Defra of the accuracy or delivery of NAP commitments and there has never been an assessment of the overall effectiveness of NAPs.

General aviation

Small airfields may not cater for large commercial traffic but many communities are impacted by noise intrusion from pilots fling circuits over their homes at relatively low altitudes, typically 1,000 feet, and other repetitive activities like aerobatic practice.

Aircraft operating from aerodromes are often subject to planning conditions that impose time restrictions on flying and the numbers of operations. Some aerodromes enter into S.106 agreements establishing flight protocols.

However, our members report that when operations from their neighbouring aerodromes breach planning conditions and flightpath protocols, little is done by the local authority to address this.

Part of the issue is obtaining evidence of planning breaches. Members tell us that aerodromes can be obstructive when members of the public report an issue, which makes supplying evidence difficult. This is also the case when pilots fail to adhere to aerodromes' noise abatement procedures.

While there is an option to complain to the Civil Aviation Authority about breaches of the Rules of the Air, it is notoriously difficult for members of the public to establish the height of an aircraft, rendering the rules somewhat ineffectual.

Airspace change and modernisation

The general deficiencies in aircraft noise regulation and enforcement discussed above also apply to the airspace change process and the airspace modernisation programme. Amongst other things:

- There are no reliable arrangements by which the Government's policy that "*the industry must continue to reduce and mitigate noise as airport capacity grows*" will be achieved in the context of airspace modernisation. Modernisation will allow more flexible use of airspace and increase airport capacity. However, the government has separated responsibility for the creation of new capacity, through the modernisation programme and the CAP 1616 process, from responsibility for authorising the use of that capacity through the planning system. At airports without capacity limits new capacity can therefore be used without planning permission or any other consent. There is in any event no link between airspace planning and land use planning
- Insufficient care is taken to ensure that adequate baseline data is gathered prior to an airspace change being implemented, so that the actual noise impacts can be judged in an evidenced scientific way against claims of noise reduction. Track plots and noise complaint data are an inadequate characterisation of noise impacts.
- Neither the Department nor the CAA has any powers to ensure that noise or emissions reductions, or improved resilience, promised in an airport's change proposal are actually delivered. Once the CAA has approved a change and the Post Implementation Review process has been completed, the CAA does not monitor the achievement of promised outcomes and has no powers to enforce them. This is a clear regulatory failure.
- It is clear that airspace modernisation will create concentrated Performance Based Navigation (PBN) flight paths and potentially new and alternate flight paths. However, both the Department

and the CAA have so far declined to assess properly whether they have an adequate understanding of the health impacts of concentrated and new flight paths despite community groups requesting such an assessment.

Conclusions

A combination of opaque policy, a fragmented institutional framework and ineffective regulatory mechanisms have led to a systematic failure to deliver government's aviation noise policies. Existing regulatory and enforcement mechanisms are not fit for purpose.

The Department for Transport is primarily responsible for this state of affairs. It has adopted has a 'publish and forget' approach to policy, rather than a delivery-focused approach. There is no monitoring and measurement of policy achievement, and no overall policy delivery programme. Policies that could and should have been translated into meaningful limits and actions have not been. The Department appears unwilling to accept that it has regulatory responsibilities for aircraft noise.

The regulation and enforcement of aircraft noise therefore needs significant reform. For regulation to be effective there must be noise limits at all airports where operations have significant impacts on local communities, set by a body that is independent, expert and has enforcement powers, at levels that give effect to government policy, and which are reviewed at least every five years. Airports should also be required to prepare, consult on and agree noise plans which set out how they intend to achieve noise limits.

We have repeatedly suggested ways in which these issues could be addressed but the Department has so far been unwilling to engage meaningfully on any changes to current arrangements. It should do so now.