

Committee: Cabinet

Agenda Item

Date: 26th May 2016

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Title: Proposals for a Revised Airspace Change
Process: Consultation by the Civil Aviation
Authority (CAA)

Portfolio Holder: Councillor Susan Barker

Item for decision

Summary

1. This report is about a CAA proposal for a revised airspace change process, which is currently out to stakeholder consultation. The report explains the existing process, the need for change, and what the CAA's proposals are. The report concludes that the CAA's proposals should be supported, but sets out some additional comments that should be included in the Council's response.
2. The Stansted Airport Advisory Panel (STAAP) considered this item at its meeting on 10th May. The additional points raised by STAAP have been included in this report.

Recommendations from STAAP

3. The Council supports the CAA's proposal for a revised airspace change process subject to the additional comments set out in this report in Paragraphs 18 - 30.
4. Officers send the Council's response via the dedicated online platform that the CAA has set up by the consultation closing date of 15th June.
5. Following the Cabinet resolution, and in consultation with the Panel Chairman, officers add any other points of detail that they subsequently feel are appropriate and which give added weight to the Council's response, such as may arise from the Strategic Aviation Special Interest Group's (SASIG) discussion of the consultation.

Financial Implications

6. None.

Background Papers

7. None.

Impact

- 8.

Communication/Consultation	<p>The consultation is being run by the CAA, and closes on <u>15th June 2016</u>. The CAA says that it cannot commit to taking into account comments received after that date. Responses are requested via a dedicated online platform, but separate submissions can be sent. The online response form consists of 40 questions requiring either “Yes”, “No” or “Don’t know” answers with space to give reasons. The CAA has chosen this format to make the consultation response easy to use for all stakeholders.</p> <p>The CAA has published a detailed consultation document - <i>CAP 1389: Consultation on proposals for a revised airspace change process</i>. This document is referred to in this report.</p>
Community Safety	To be taken into account by the CAA.
Equalities	To be taken into account by the CAA.
Health and Safety	To be taken into account by the CAA.
Human Rights/Legal Implications	To be taken into account by the CAA.
Sustainability	To be taken into account by the CAA.
Ward-specific impacts	Districtwide
Workforce/Workplace	Officer and Member time in preparing the consultation response.

Situation

9. This consultation is about proposed changes to the process that is followed when a “sponsor” (usually an airport operator or air traffic control provider) puts forward a proposal for permanent change to the published airspace structure, such as a change to a flightpath. The current process requires the sponsor to go through a series of stages before formally submitting a change proposal to the CAA for consideration and a regulatory decision.
10. The consultation is not about any change to Government policy on aviation, nor is it about any individual proposal for airspace change, including those which are outside the CAA’s control.
11. The current process is published in *CAP 725 Airspace Change Process Guidance Document* and involves 7 stages from initial briefing to operational

review post-implementation. Typically, the current process takes about 75 weeks from start to finish. The CAA describes the current process as follows (Paragraph 2.8 of CAP 1389):

“These stages begin with outline conversations between the sponsor and the CAA around design options and who should be consulted. The sponsor then consults with interested parties including, where appropriate, local communities. In the light of responses the sponsor may modify the proposals before making a formal submission of the proposal to the CAA for a decision. Assuming that the proposal is approved, the CAA carries out a review of the change after it has been implemented, typically after one year of operation”.

The need for change

12. In CAP 1389 the CAA gives a number of reasons for changing the current process. The backdrop is the need to modernise the UK’s airspace structure and to “future-proof” the process in the light of changing international requirements.

13. One significant reason for change is given as follows by the CAA (Paragraph 3.1 of CAP 1389):

“Communities close to airports increasingly demonstrate their interest in the management of aviation noise and the impact it has on those communities. Some recent airspace change proposals have highlighted a lack of trust between some local communities, the aviation industry and the CAA as regulator. This can sometimes create an impasse on airspace changes – changes which, in totality, might achieve an improved outcome in respect of all the factors we have to consider (although, as a consequence, an individual stakeholder may be in a worse position than if no change were made).

It is therefore essential that the CAA’s airspace change process meets modern standards for regulatory decision-making, and above all else is seen as fair, transparent, consistent and proportionate”.

14. In 2015, the CAA commissioned Helios (a management and technology consultant) to undertake an independent study of the current airspace change process. Their findings were published in December 2015 as CAP 1356 – *Helios report: Independent review of the Civil Aviation Authority’s Airspace Change process.*

15. The CAA states in Paragraph 3.29 of CAP 1389 that Helios’ single most important observation was that there was a lack of transparency in the process, particularly regarding the CAA’s activities, leading to suspicion that interests were not being well represented. Helios also suggested that, as the change sponsor ran the consultation process and handled the responses, there was a potential conflict of interest. The CAA needed to be more engaged with stakeholders and communities.

The proposal for a revised airspace change process

16. A useful summary of the key changes proposed by the CAA is included in Paragraphs 4.11 – 4.23 of *CAP 1389*. These paragraphs are attached at the end of this report. To avoid repetition it is not proposed to go through these in detail in the text of this report. In Chapter 4 of *CAP 1389* there is a lot of detail, especially via flow diagrams, of the 7 revised stages of the airspace change process. *CAP 1389* can be read in its entirety at:

<http://publicapps.caa.co.uk/docs/33/CAP%201389%20March%202016.pdf>

17. The changes should be supported for the additional transparency that they will bring to the process, particularly through both the extra CAA engagement and the increased public involvement. If these changes are implemented, the airspace change process would be extended to 108 weeks. This is of concern to officers because of the additional period of uncertainty that would result for local residents. On balance, this is considered to be a price worth paying for the additional public involvement and the extra CAA engagement in the various stages of the process.
18. There are some comments that officers wish to make on the proposals, which it is suggested are incorporated into the Council's response.

Online airspace change portal

19. The portal would be used by sponsors for their formal consultation process and by the CAA to oversee the consultations. All consultation material, consultee submissions and sponsor's responses would be published on the portal, which would be accessible to all. *CAP 1389* does not, however, set out how the process would be accessible to those without internet access, although it does acknowledge that some responses may be sent by post and uploaded to the portal by the sponsor. Paragraph 4.74 of *CAP 1389* states that sponsors should maintain records to "*demonstrate that all reasonable actions have been taken to ensure stakeholders are informed of the consultation and have been offered the opportunity to engage with it*". This should include what measures have been undertaken to ensure that consultation material is publicised and made available offline to those who need it.

"Levels" of airspace change

20. The CAA is proposing 2 levels of airspace change, Level 1 being high impact, and Level 2 being medium to low impact. The consultation process would be "scaled" depending upon which level of change is being proposed (see table 5.1 of *CAP 1389* on Pages 87-93). Level 1 is defined as changes to traffic patterns below 7,000ft, the height at which reducing fuel burn and carbon emissions begin to be prioritised above noise mitigation. For a Level 1 change, the sponsor would be required to engage with locally affected communities at Steps 1B, 2A and 3A of the proposed revised airspace change process. For Level 2 changes (alterations to air traffic patterns above 7,000ft)

this requirement is dropped.

21. It is considered that most proposed airspace changes at Stansted Airport that affect Uttlesford would be Level 1 because they would occur below 7,000ft. It is the Council's experience, however, that communities overflown at heights above 7,000ft do consider themselves to be affected by aircraft noise, especially in areas of tranquillity. This was evidenced by responses that the Council received to BAA Stansted's proposal to expand Stansted Airport from 25-35mppa. The CAA should reconsider the need for prior engagement with affected communities for Level 2 changes, especially if a medium impact is anticipated.

Public evidence session

22. Helios proposed that a public hearing be introduced into Step 5A, although the CAA has redefined this as a public evidence session run by the CAA for Level 1 changes. Looking at the Helios report the difference seems mainly to be one of semantics as the CAA says that the public evidence session will "*broadly adhere to the qualities Helios outlined for the hearing*" (Paragraph 4.93 of CAP 1389). The purpose is for the CAA to listen and to only ask questions if there is a lack of understanding on its part. There will be no opportunity to challenge other submissions, and there will be no legal representation. The sponsor may be present, but only to offer clarification, not to argue their case.
23. It is considered that there might be benefit in the public evidence session being more two-way in nature. It is highly likely that consultees may have procedural questions about the airspace change process. It is not considered that the absence of legal representation should prevent reasonable questioning as part of the process. The CAA can act as mediator to ensure fairness. Public evidence sessions could be run along the same lines as planning hearings, which are relatively informal round-the-table discussions led and chaired by a Planning Inspector. At hearings, the Inspector sets the agenda based around the key issues that he or she considers are material to the case, and leads and moderates the subsequent discussions.
24. The CAA is not proposing public evidence sessions for Level 2 changes. This may be acceptable in the vast majority of cases, but inevitably there may be some that generate considerable public interest especially if a medium impact is anticipated. It is considered that the need for a public evidence session for a Level 2 change should be reviewed as part of the process for each submitted proposal.

Steps 1B – 2B, Design principles, options development and appraisal

25. At the STAAP meeting, Members were concerned that the agreed design principles should cover all the relevant aspects such as noise and the need to avoid overflying specific areas. It is also important that, at the options appraisal stage, noise metrics are used that are more representative of what local residents hear on the ground rather than the standard Leq averaging

contour. Specifically, the N60 and N70 “number above” contours are suggested, which identify the anticipated number of noise events above a specific level at a particular location. At the consultation stage, all viable options that were considered by the sponsor should be included irrespective of whether there is a preferred option.

An appeal mechanism?

26. In Paragraph 3.6 of CAP 1356, Helios recommended that an appeal mechanism be introduced because:

“there needs to be a way to challenge whether the decision made by the CAA was reasonable, based on the evidence available, or challenge the decision if there has been a breach of process. Currently this is only possible via a Judicial Review (which is expensive and therefore not open to all). In our view, it is appropriate that anyone impacted by an AC has a reasonable opportunity to request an appeal.

However, there should be pre-defined grounds for appeal that will ensure that the process will not be unduly lengthened by appeals that lack substance. The grounds for appeal should be defined by the CAA but would likely be that there was a serious error in the procedure or that there were factual errors in the information on which the decision was based”.

27. The CAA has decided not to accept the recommendation for an appeal mechanism to be set up. It does not think that this mechanism would add sufficient value to the revised process for two reasons which it sets out in Paragraphs 4.113 – 4.114 of CAP 1389. These are (in summary) :

i) The new gateways and increased transparency of the process means that the CAA’s thinking is in the public domain throughout. Adding an appeal mechanism would increase the burden on the sponsor and the CAA, and could add a further year to the airspace change process.

ii) The CAA believes that the Courts are the right place for a judgement as to whether due process has been followed, and Judicial Review would still be available in any event after an internal appeal.

28. In deciding against an appeal mechanism, the CAA adds in paragraph 4.115 of CAP 1389:

“We have also taken into account the current statutory framework for airspace change, which enables the CAA to refer decisions to the Secretary of State under specific conditions relating to the anticipated environmental impact of the change (see Step 5B above). The Secretary of State is able to effectively challenge the substance of the CAA’s airspace decision (by preventing implementation of it), meaning that they could effectively substitute the CAA’s decision with their own. We would review any revised process 12 months after it is first implemented to determine whether any additional scrutiny is needed and, depending on the evidence gathered during this review, we may

reconsider our position on the appeal at that time”.

29. Officers consider that there is merit in introducing an appeal mechanism along the lines recommended by Helios. An appeal would be conducted post-determination but before implementation. Airspace change can affect many people and, whilst the new process would be more transparent, an appeal would add a further check akin to the role of the Ombudsman in town planning procedures. No processes are ever infallible, and the appeal mechanism would be one way of ensuring that the process is continually policed. However, as the CAA is committed to a 12-month review, the Council should ask that the outcome of the review is made public for consultation.
30. At the STAAP meeting, Members considered that there ought to be an opportunity for stakeholders to give notice to the CAA of an intention to appeal at each of the gateway stages. A further option would be arbitration.

Ongoing discussions

31. SASIG, which is the aviation policy group of the Local Government Association, is discussing the consultation via one of the technical working groups that it has set up. Officers are taking part in those discussions. SASIG is not likely to finalise its position before the dates that the Panel and Cabinet meets, the latter being 3 weeks before the consultation closes. It is therefore recommended that, in consultation with the Chairman of the Panel, officers incorporate into the Council's reply any new points arising from SASIG's discussions which officers consider are appropriate and which give added weight to the Council's response.

After the consultation closes

32. Once the consultation has finished, the CAA will consider the responses that it has received and will set out those that it has decided to proceed with in a comments response document. The changes will then be incorporated into a replacement for *CAP 725*, with a consultation following on the redrafted version in early 2017. A final version of the *CAP 725* replacement will be published in April 2017, after which the revised airspace change process will be implemented.

Conclusions

It is considered that the revised airspace change proposal would be an improvement on the existing process for the reasons set out in Paragraph 4.11 of *CAP 1389*. Subject to the additional points set out in Paragraphs 18 – 30 of this report, the Council should support the proposal.

Risk Analysis

33.

Risk	Likelihood	Impact	Mitigating actions
Airspace changes are introduced without local consultation.	1. Unlikely, because the existing airspace change process contains procedures for public consultation, and these would be enhanced by the revised proposals.	2. The impact of airspace change is a revised noise climate for affected residents.	Respond to the revised airspace change process consultation to support the proposal for enhanced public consultation.
Residents do not consider that their views have been taken into account because the airspace change process lacks a transparent decision making process.	2. It is acknowledged in the consultation document that the role of the CAA in the decision making process can be seen as lacking transparency. Partly, this is because the CAA's role has not previously been fully explained or set out.	2. Lack of transparency can lead to criticisms that the airspace change process is unfair, and is weighed in favour of the airspace change proposer.	Respond to the revised airspace change process consultation to support the proposal for greater CAA involvement and a clearer setting out of its role in the process.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.