

PINS Ref: APP/C1570/W/20/3256619

LPA Ref: UTT/18/0460/FUL

Appellant: Stansted Airport Limited

**Town & Country Planning Act 1990 (As Amended)
Town & Country Planning (Inquiries Procedure) (England)
Rules 2000**

Public Inquiry

Stop Stansted Expansion

**FURTHER SUBMISSIONS ON
CARBON EMISSIONS AND
CLIMATE CHANGE**

07 May 2021

Stop Stansted Expansion was established in 2002 in response to Government proposals for major expansion at Stansted Airport. We have some 7,500 members and registered online supporters including 150 parish and town councils and local residents' groups and national and local environmental organisations. Our objective is to contain the development of Stansted Airport within sustainable limits and, in this way, to protect the quality of life for residents over wide areas of Cambridgeshire, Essex, Hertfordshire and Suffolk, to preserve our heritage and to protect the natural environment.



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1 INTRODUCTION

- 1.1 SSE welcomes the invitation of the Panel on 23 April 2021 to comment on the Government's announcement of 20 April 2021 that emissions from international aviation would be included in the Sixth Carbon Budget ('6CB') as part of a more ambitious Government objective to reduce UK carbon emissions by 78% by 2035, compared to 1990 levels. The draft Statutory Instrument, giving legal force to this objective, was laid before Parliament on 21 April 2021 and is appended at Annex A, together with its Explanatory Memorandum which, inter alia, confirms at para 7.4 the inclusion of emissions from international aviation.
- 1.2 Prior to the arrival of the Panel's invitation to comment, SSE had prepared a letter on the same subject, jointly addressed to the Secretary of State for Housing, Communities and Local Government and the Secretary of State for Transport. The purpose of that letter, sent on the same day as the Panel's invitation to comment, was to seek to ensure that the policy announced by the Government on 20 April would be taken into account in the decision-making process for this Appeal. SSE's letter is appended at Annex B.
- 1.3 The extent and implications of this Government decision are expected to become clearer when the draft Aviation Decarbonisation Strategy ("ADS") is published. We expect to see the draft ADS later this month and there will then be a period for consultation before the final ADS, which we expect to see later this year.
- 1.4 Even at this stage, however, the Government's recent announcement that carbon emissions from international aviation are to be included in the 6CB significantly undermines the Appellant's case in two major respects:
 - i. The Appellant's assertion that the "stress test" underpinning the June 2018 Making Best Use ('MBU') policy document establishes that the policy does not compromise the UK's ability to meet its statutory carbon targets, such that the carbon emissions arising from the proposed development at Stansted have been "pre-authorised" by the MBU policy; and
 - ii. The Appellant's assertion that emissions from international aviation were of no relevance to this application because: (a) they were a matter for national, not local, consideration; and (b) the Government was committed to an international solution and would not introduce unilateral (UK) controls.
- 1.5 The Panel will, by now, be familiar with the extensive written evidence presented to the Inquiry on this topic, as well as the transcripts of the evidence in chief and cross examination sessions which fully occupied Week 4 of the Inquiry. To keep it as short as reasonably possible, this submission seeks to avoid unnecessary duplication of earlier evidence.

2 THE SIXTH CARBON BUDGET

2.1 On 9 December 2020, the Climate Change Committee ('CCC') published its formal advice to the Government on the 6CB, specifically on the means to achieve the new statutory target of 'Net Zero' emissions by 2050. SSE immediately submitted all of that CCC advice (extending to over 1,000 pages) to the Inquiry¹ and submitted a Supplementary Proof of Evidence (SSE/7/4) on 5 January 2021 summarising the CCC advice and highlighting its importance.

2.2 The 6CB will be the first carbon budget to be set since the adoption of the statutory Net Zero Target in June 2019. It should not therefore be surprising that the CCC provided the Government with such extensive advice ahead of the 6CB. At the heart of the CCC's advice for UK aviation is a scenario described as the 'Balanced Net Zero Pathway'. This is underpinned by seven key recommendations, as follows:

- (1) *Formally include international aviation emissions within UK climate targets when setting the Sixth Carbon Budget;*
- (2) *Work with ICAO to set a long-term goal for aviation consistent with the Paris Agreement, strengthen the CORSIA scheme and align CORSIA to this long-term goal;*
- (3) *Commit to a Net Zero goal for UK aviation as part of the forthcoming Aviation Decarbonisation Strategy;*
- (4) *No net expansion of UK airport capacity unless the sector is on track to sufficiently outperform its net emissions trajectory and can accommodate the additional demand;*
- (5) *Monitor non-CO₂ effects of aviation, set a minimum goal of no further warming after 2050, research mitigation options, and consider how best to tackle non-CO₂ effects alongside UK climate targets without increasing CO₂ emissions;*
- (6) *Longer-term, support for sustainable aviation fuel (SAF) should transition to a more bespoke policy, such as a blending mandate. However, near-term construction of commercial SAF facilities in the UK still needs to be supported;*
- (7) *Continue innovation and demonstration support for SAF technologies, aircraft efficiency measures, hybrid, full electric and hydrogen aircraft development and airspace modernisation.*

2.3 The Government's timely acceptance of the first of the above recommendations provides the foundation for other CCC recommendations to be implemented. That is not to say that we expect the Government to accept all of these CCC recommendations. However, once a

¹ CD17.75 and CD17.76-CD17.81.

statutory framework of control is in place (and even when it is pending) it becomes not only possible, but necessary, for other measures to be taken to deliver the objective.

- 2.4 In giving evidence to the Inquiry on 3 February 2021, Mr Lockley explained that, on current best estimates of the rate at which aviation can decarbonise, the CCC concluded that passenger numbers would need to be constrained to 365mppa in 2050. By comparison, the CCC estimated that current UK airport capacity is already at least 370mppa and SSE presented evidence of proposals in the pipeline to increase this to more than 500mppa².
- 2.5 The Appellant was generally dismissive of Mr Lockley's evidence and, indeed, also dismissive of the CCC's advice: there was an attempt to discredit the correlation assumed by the CCC between passenger numbers and CO₂ emissions as well as a general assault on the reliability of the CCC's advice and the weight it should and would carry with Government. It was even contended that the national position on aviation CO₂ emissions was of no consequence, so that when dealing with planning applications it should be 'first come, first served'.

3 MAKING BEST USE (MBU)

- 3.1 A central part of STAL's case was that *"the impacts of MBU proposals have been pre-authorized by MBU"*³. In addition, after the completion of the Inquiry, it emerged that STAL had written to the Secretary of State for Transport and the Secretary of State for Housing, Communities and Local Government on 6 October 2020 inviting both to make a direction under s.266(1) of the Town and Country Planning Act 1990 on grounds which included an assertion that SSE (and UDC) were challenging the lawfulness of national aviation policy, including the MBU policy. That assertion was then, and is now, completely untrue.
- 3.2 On the contrary, SSE attached very significant weight to the MBU policy, and repeatedly made reference to its two central elements:

- i. The summary of the policy as set out in bold type in paragraph 1.29:

"Therefore the government is supportive of airports beyond Heathrow making best use of their existing runways. However, we recognise that the development of airports can have negative as well as positive local impacts, including on noise levels. We therefore consider that any proposals should be judged by the relevant planning authority, taking careful account of all relevant considerations, particularly economic and environmental impacts and proposed mitigations. This policy statement does not prejudice the

² SSE/7/3.

³ STAL Closing Submissions, paragraph 178.

decision of those authorities who will be required to give proper consideration to such applications. It instead leaves it up to local, rather than national, government to consider each case on its merits."

- ii. The updated forecasts for UK aviation, set down in Tables 1, 2 and 3 of the MBU policy document, as shown in summary form below for 2050:

2050	Baseline	Baseline + MBU	Baseline + HR3	Baseline + MBU + HR3
Passengers (million)	409.5	421.3	435.3	444.2
ATMs ('000)	2,901	2,958	3,013	3,043
CO ₂ emissions (million tonnes)*	37.0	37.9	39.9	40.8

** Prior to deductions for additional mitigation - see Footnote 5 below.*

- 3.3 The first of the above two points (3.2.i.) makes clear - on any reading - that the MBU policy does not prejudge or provide a mandate for the proposed development but instead requires each case to be considered on its merits, having regard to its positive and negative impacts.
- 3.4 The second point (3.2.ii.) is purely arithmetic. In June 2018, the DfT updated its November 2017 forecasts to project the impact of the MBU policy (and the ANPS⁴) on aviation carbon emissions. Essentially, this was to check that aviation policy could be reconciled with the Government's climate change policy. More particularly, the DfT wanted to be able to demonstrate that the key planning assumption of (at most) 37.5Mt of CO₂ emissions in 2050 could be achieved even with a third Heathrow runway and the MBU policy⁵.
- 3.5 The Appellant described this as a "stress test". However, as Mr Lockley pointed out in his evidence to the Inquiry, events had moved on since that stress test was carried out ahead of the publication of the MBU policy in June 2018. Most notably, in June 2019, Section 1 of the Climate Change Act ('CCA') was amended so that there was now a statutory Net Zero emissions target for 2050 rather than, as previously, a target to achieve an 80% reduction from 1990 levels. Mr Lockley's evidence was that the planning assumption in the MBU policy, which allowed for aviation emissions of 37.5Mt CO₂ in 2050, would need to be recalibrated.

⁴ The November 2017 DfT forecasts included three different sets of forecasts for an additional runway in the South East. When the Heathrow NW runway option was selected for the ANPS in June 2018, the DfT used that particular set of forecasts in the MBU policy document.

⁵ It can be seen from the above table that the CO₂ projections in the MBU policy document exceed 37.5Mt. However, the DfT was confident this could be resolved by increased use of sustainable aviation fuels and single engine taxiing.

4 CONCLUDING POINTS

- 4.1 With the Government now committed to including all aviation emissions in the 6CB and thereby making them subject to statutory control, the need for recalibration can no longer be in doubt. The CCC recommended that the planning assumption should be reduced from 37.5Mt CO₂ to 23.0Mt CO₂, and this recommendation (or alternative measures which would have a similar effect) will in due course need to be adopted by Government in order to bring UK aviation emissions under control.
- 4.2 It is important to note that in arriving at a cap of 23.0Mt CO₂, the CCC used assumptions with regard to technological improvements and use of sustainable fuels which were very similar to the assumptions made by the industry body, Sustainable Aviation. Even on the basis of these optimistic assumptions, the CCC concluded that there would still need to be significant constraints on the growth in passenger numbers.
- 4.3 The CCC's advice to Government on the 6CB included the recommendation that there should be no net airport expansion unless balanced by airport capacity reduction elsewhere in the UK. We do not yet know whether the Government will introduce a moratorium along the lines recommended by the CCC but we do know that the Government is now legally committed to meeting carbon budgets and targets under the CCA that will include emissions from international aviation from 2033. This will require demand management of one form or another. The direction of travel is abundantly clear.
- 4.4 The forthcoming ADS will need to deliver a step change in policy to reduce aviation emissions and the expansion of UK airports will need to be curtailed. The CCC's advice makes it clear that this is a necessary component for the delivery of the UK's statutory Net Zero climate objective.
- 4.5 The Government announcement on 20 April 2021 that carbon emissions from international aviation are to be included in the 6CB reinforces our view that it would clearly be wrong to permit the expansion of Stansted (or any airport) at this time. The 6CB must be laid before Parliament no later than 30 June 2021 and this should provide further information as to the pace and direction of Government policy. We may however need to wait until the final ADS is published, later this year, for the Government's full response to the recommendations for the aviation sector made by the CCC in December 2020.

Stop Stansted Expansion
7 May 2021

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.

Draft Order laid before Parliament under sections 8(3) and 91(1) of the Climate Change Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2021 No.

CLIMATE CHANGE

The Carbon Budget Order 2021

<i>Made</i>	- - - -	***
<i>Coming into force</i>	- -	***

A draft of this instrument was laid before and approved by a resolution of each House of Parliament, in accordance with sections 8(3) and 91(1) of the Climate Change Act 2008 (“the Act”)(1).

Before the draft was so laid, the Secretary of State took into account—

- (a) the advice of the Committee on Climate Change under section 34 of the Act, in accordance with section 9(1)(a) of the Act; and
- (b) any representations made by the Scottish Ministers, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, in accordance with section 9(1)(b) of the Act(2).

This Order is made in accordance with the duty to set carbon budgets for budgetary periods imposed by sections 4(1)(a) and 8(1) of the Act, and is made with a view to—

- (a) meeting the target in section 1, and the requirements of section 5, of the Act(3); and
- (b) complying with the European and international obligations of the United Kingdom.

The Secretary of State has taken into account the matters mentioned in section 10(2) of the Act.

Accordingly the Secretary of State, in exercise of the powers conferred by section 8(1) of the Act, makes the following Order:

Citation and coming into force

1. This Order may be cited as the Carbon Budget Order 2021 and comes into force on the day after the day on which it is made.

(1) 2008 c. 27.

(2) See the definitions of “national authority” and “the relevant Northern Ireland department” in sections 95 and 96.

(3) Section 1 was amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 (S.I. 2019/1056), article 2. Section 5 was amended by the Climate Change Act 2008 (2020 Target, Credit Limit and Definitions) Order 2009 (S.I. 2009/1258), articles 2(2) and 2(3).

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.

Carbon budget

2. The carbon budget for the 2033-2037 budgetary period is 965,000,000 tonnes of carbon dioxide equivalent⁽⁴⁾.

Minister of State for Business, Energy and Clean Growth

Department for Business, Energy and Industrial Strategy

Date

(4) See the definition of “tonne of carbon dioxide equivalent” in section 93.

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order sets the carbon budget for the 2033-2037 budgetary period at 965 million tonnes of carbon dioxide equivalent. Carbon budgets set a cap on the maximum level of the net UK carbon account for each five-year budgetary period. The net UK carbon account is defined in section 27 of the Climate Change Act 2008.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Business, Energy and Industrial Strategy at 1 Victoria Street, London, SW1H 0ET and published with its Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

EXPLANATORY MEMORANDUM TO

THE CARBON BUDGET ORDER 2021

2021 No. XXX

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Carbon Budget Order 2021 sets the carbon budget for the sixth budgetary period (2033-2037) (the sixth carbon budget), at 965 million tonnes of carbon dioxide equivalent.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is to the whole of the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Secretary of State, Rt Hon Kwasi Kwarteng, has made the following statement regarding Human Rights:

“In my view the provisions of the Carbon Budget Order 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Climate Change Act 2008 (“the Act”) requires that the Secretary of State ensures that the “net UK carbon account” for 2050 is at least 100% lower than the 1990 baseline (section 1). The net UK carbon account is the amount of net UK emissions of targeted greenhouse gases for a period reduced by the amount of carbon units credited to the UK carbon account and increased by the amount of carbon units debited from the net UK carbon account for that period.
- 6.2 With a view to meeting the 2050 target, the Secretary of State must set five year “carbon budgets” representing the maximum level of the net UK carbon account for these budgetary periods.
- 6.3 The Carbon Budgets Order 2009 (S.I. 2009/1259) sets the first three carbon budgets for the purposes of section 4(2)(a) of the Act. The Carbon Budgets Order 2011 (S.I. 2011/1603) sets the fourth carbon budget for the purposes of section 4(2)(b) of the Act. The Carbon Budgets Order 2016 (S.I. 2016/785) sets the fifth carbon budget for

the purposes of section 4(2)(b) of the Act. Separate Memoranda were prepared in relation to each of these Orders.

- 6.4 The order setting the sixth carbon budget is subject to the affirmative resolution procedure as per section 8(3) of the Act.
- 6.5 The sixth carbon budget is to be set by the 30 June 2021 (sections 4(2)(b) and 8 of the Act).

7. Policy background

What is being done and why?

- 7.1 The sixth carbon budget is the total permissible level of the net UK carbon account for the five-year period 2033-2037. The level is set out in Article 2 of the Carbon Budget Order 2021, at 965 million tonnes of carbon dioxide equivalent. The proposed sixth carbon budget level is consistent with the 2050 target specified in Section 1 of the Act, as required by section 8(2)(a) of the Act. The Carbon Budget Order 2021 is of political and legal importance in that it fulfils the requirements as set out in section 4(2)(b).
- 7.2 This budget is the level recommended by the Climate Change Committee (CCC). The Government has set out its response to the CCC's advice on the sixth carbon budget in more detail in the Impact Assessment (IA), published alongside this Order. This also includes an explanation of how the factors in section 10 of the Act have been taken into account.
- 7.3 The Government is required by section 14 of the Act to publish a report of its proposals and policies for meeting the carbon budgets as soon as is reasonably practicable after the setting the carbon budgets.

The coverage of "international aviation" and "international shipping"

- 7.4 Emissions from international aviation and shipping will count towards emissions from sources in the United Kingdom for the purposes of the sixth carbon budget. They will be formally included by regulations under section 30 of the Act.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument does not give rise to the need for any consolidation.

10. Consultation Outcome

- 10.1 The Act does not require public consultation on the issue covered by the Order to which this Explanatory Memorandum relates. However, there are some specific consultation requirements. The Secretary of State must take into account the CCC's advice provided under section 34(1)(b) in relation to the budgetary period and must consult the Devolved Administrations before laying the draft Order proposing the limit for each budgetary period. These requirements have been met.

10.2 The Secretary of State is also required to publish a statement setting out how the views of the Devolved Administrations have been taken into account as per section 9(3) of the Act, and this statement is set out in the IA.

11. Guidance

11.1 No guidance has been published in relation to the matters contained in the Order. This memorandum, alongside the IA, provides the full background to the Government's decision.

12. Impact

12.1 There is no impact on business, charities or voluntary bodies.

12.2 There is no impact on the public sector.

12.3 A full IA is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website. This presents the analytical evidence that informs the setting of the proposed level of the sixth carbon budget. It also sets out the need for the UK to be on a cost-effective emissions pathway to 2050 in order to meet its statutory obligations contained within the Act. There are no direct costs and benefits in setting the budget level alone. The overall costs and benefits of meeting the sixth carbon budget level will depend on how we choose to meet it, and on important drivers such as energy prices and technology costs. The IA gives an illustration of the scale of these impacts.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 Section 21 of the Act provides a power to amend an order setting a carbon budget where certain criteria, developments in scientific knowledge about climate change or European or international law or policy, can be satisfied.

15. Contact

15.1 Andy Hackett at the Department for Business, Energy and Industrial Strategy
Telephone: 020 7215 5992 or email: andy.hackett@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sarah James, Deputy Director for Net Zero and Carbon Budgets at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister of State (Minister for Business, Energy and Clean Growth) at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.



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23 April 2021

The Rt Hon Robert Jenrick, MP
Secretary of State for Housing, Communities and Local Government
3rd Floor, Fry Building
2 Marsham Street
London SW1P 4DF

The Rt Hon Grant Shapps, MP
Secretary of State for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR

via email: [REDACTED]

Dear Secretaries of State,

Planning Appeal APP/C1570/W/20/3256619

An Inquiry into the above planning appeal, relating to expansion proposals for Stansted Airport, was held between 12 January and 12 March 2021. The decision is awaited.

You have hitherto taken the view that jurisdiction of this case need not be a matter for yourselves and so should remain with the appointed Planning Inspectors.

However, in the light of the Government's landmark announcement this week that aviation carbon emissions are to be included in future carbon budgets, and thereby subject to statutory control, we believe there is now a compelling case for this Appeal to be determined jointly by yourselves.

In the course of the Inquiry there was considerable uncertainty, conflicting evidence and speculation regarding the response that the Government would make to the advice it received from the Climate Change Committee on 9 December 2020 in relation to the Sixth Carbon Budget. Now that we have clarification of the Government's position, the impact of the development proposal on UK carbon emissions is clearly of direct relevance not only to yourselves but also to the Government as a whole, having regard to the statutory duty under section 1 of the Climate Change Act 2008, as amended.

Patron: Terry Waite CBE

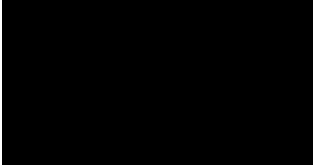
Stop Stansted Expansion is a working group of the North West Essex and East Herts Preservation Association

A review of the relevant transcripts and closing submissions would readily dispel any potential doubt as to the importance attached to this issue at the Inquiry and, in the light of the changed circumstances, we believe that it is now appropriate for you to issue a direction for joint determination under section 266 of the Town & Country Planning Act 1990. Alternatively, at the very least, the evidence before the Inspectors needs to be updated.

I am copying this letter to our local MP Kemi Badenoch who I know is taking a close interest in this matter and is aware of the earlier similar request to you by the Manchester Airports Group to issue a section 266 direction for joint determination.

For transparency, I am also copying this letter to the other main parties and the Inspectorate.

Yours sincerely,



Peter Sanders
Chairman, Stop Stansted Expansion

cc Kemi Badenoch MP - 



 - esmith@uttlesford.gov.uk

